

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [REDACTED] 1922

No. ~~1335~~ 324

W. H. PHIPPS AND W. H. PHIPPS, AS DIRECTOR OF THE
DEPARTMENT OF COMMERCE OF THE STATE OF OHIO,
APPELLANT,

vs.

THE CLEVELAND REFINING COMPANY OF CLEVELAND,
OHIO.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF OHIO.

FILED APRIL 10, 1922.

(28,820)

(28,820)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 865.

W. H. PHIPPS AND W. H. PHIPPS, AS DIRECTOR OF THE
DEPARTMENT OF COMMERCE OF THE STATE OF OHIO,
APPELLANT,

vs.

THE CLEVELAND REFINING COMPANY OF CLEVELAND,
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TRANSCRIPT OF RECORD

In the District Court of the United States for the Southern District of Ohio.

The Cleveland Refining Company of Cleveland, Ohio,

Plaintiff,

vs.

W. H. Phipps, and W. H. Phipps as Director of the Department of Commerce of the State of Ohio,

Defendant.

} In Equity.

To the Honorable Judges of Said Court:

Plaintiff is a corporation duly organized and existing under and by virtue of the laws of the state of Ohio, and a citizen of said state, having its principal place of business in the city of East Cleveland, Ohio, and engaged in the manufacture and sale of petroleum and its products. Defendant, W. H. Phipps, as director of the Department of Commerce of the state of Ohio, duly qualified and holding office as such director under and by virtue of a certain act passed by the general assembly of the state of Ohio entitled "An act to establish an administrative code for the state, to abolish certain offices, to create new administrative departments and redistribute among them existing administering functions," which act became effective April 26, 1921.

The said act abolished the office of the state inspector of oils, created the Department of Commerce and transferred to the director of said Department of Commerce all the powers and duties theretofore vested in the state inspectors of oils and any and all deputies and employees of such office, and provided that whatever rights, powers or duties which theretofore had been vested in or exercised by any officer, board, commission, institution or department or any deputy inspector or subordinate officer thereof were transferred by said act, either in whole or in part or vested in a department created by said act, such rights, powers and duties should be vested in and should be exercised by the department or institution to

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which the same were transferred by said act and not otherwise, and that every act done in the exercise, powers and duties should have the same legal effect as done by the former officer, board, commissioner, institution or department or any deputy, inspector or subordinate officer thereof.

Plaintiff complains of defendant and says that since the 1st day of May, 1920, and at all times hereinafter mentioned it was engaged in the sale and distribution of kerosene, gasoline, naphtha and other products of petroleum in the State and has invested a large amount of capital in buildings, storage tanks, side tracks, machinery, tools, auto trucks and other equipments necessary for and used in the receiving, handling and delivery of such oils, gasoline, naphthas and other products of petroleum, and also has large quantities of kerosene, oils, gasoline, naphtha and other products of petroleum in storage tanks, wood and steel barrels, cans and other packages in stock, and employs a large number of agents, laborers and other employes in order to sell, furnish and deliver said petroleum products to the public to meet the requirements of its large and constantly increasing trade.

Plaintiff buys and ships into the State of Ohio from other states of the United States large quantities of kerosene, oil, gasoline, naphtha and other products of petroleum in tank cars and in barrels, cans and other packages and has contracts and arrangements for such goods which it is bound to consummate and can only do so through its established business without great loss to itself and deprivation and inconvenience to the public.

On or about the 19th day of May, 1915, the General Assembly of the State of Ohio passed an act entitled, "An Act to provide for the inspection of petroleum, illuminating oils, gasoline, naphtha, and the repeal of Sections 844 to 868, inclusive, of the General Code," said Act being found in the laws of Ohio, Vol. 105, p. 309, and being numbered in the General Code of the State of Ohio Sections 844 to 868, inclusive. The said Act was approved by the Governor of the State of Ohio and was filed in the office of the Secretary of State at Columbus, Ohio, on the 19th day of May, 1915.

Since the taking effect of said Act and up to January

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22, 1921, the State Inspector of Oils and his deputies appointed and acting from time to time for said officer have enforced the provisions of said Act and particularly the sections thereof providing for the payment of inspection fees. Said petroleum products were purchased by this plaintiff and were shipped to it from points outside of the State of Ohio, and were received by it at its plant, and inspection, under said Act, was required to be made at said point of delivery to this plaintiff before the tank cars or containers of said products were unloaded or emptied into this plaintiff's tanks or containers.

On January 22, 1921, in pursuance of an order of the Governor of the State of Ohio all of the Deputy State Oil Inspectors were discharged and no successors were appointed until about August 1st, 1921, and the inspection of the illuminating oils, gasoline, naphtha and other petroleum products, under the said Act, was discontinued and wholly abandoned. Under date of January 21, 1921, one W. H. Walker, then holding the said office of State Inspector of Oils, said office having been since been abolished, issued a notice over his official signature to all persons engaged in the petroleum business in Ohio stating that:

"Commencing Monday, January 24th and continuing until further notice you may instruct all your agents and representatives to disregard laws relating to the inspection of oils, gasoline, naphtha and etc."

On or about August 1st, 1921, the defendant herein as Director of Commerce as successor to the State Inspector of Oils with all of the powers, and authority of said office attempted to resume the inspection of petroleum products under the said Act of May 19, 1915, but such inspection since August 1st, 1921, has been incomplete and inadequate, and only a small portion of the petroleum products sold within the State of Ohio have been inspected since that date. The said Director of the Department of Commerce and his deputies and subordinates have wholly failed to inspect and label petroleum products shipped in smaller containers than railroad tank cars as required by said Act, and the said Director of Commerce has issued regulations and orders requiring that any firm making shipments in such small containers shall keep an ac-

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curate record of shipments reporting the same each month to the Department of Commerce and pay the inspection fees thereon, and that the person making such verified return of such shipments shall act as the deputy inspector of oils as to such products and shall serve without pay; that the Department of Commerce has wholly failed to supply the shippers of petroleum products with inspection or to fix labels and stencils for or upon containers of petroleum products other than railroad tank cars and that in respect to shipments of petroleum products in containers smaller than railroad tank cars the Department of Commerce has wholly failed to perform any inspection, stenciling or labeling since August 1st, 1921, as well as since January 22, 1921.

Plaintiff further says that defendant as Director of the Department of Commerce of the State of Ohio is insisting upon the collection, from the plaintiff, and all others similarly situated, all the fees provided for in the said Act upon all of such products shipped or received by this plaintiff and others, whether inspected or not.

Plaintiff further says that in spite of the fact that during the period from January 22, 1921, to August 1st, 1921, no inspections of petroleum products were made under said Act the defendant as Director of the Department of Commerce of the State of Ohio is insisting that this plaintiff and all others similarly situated pay to him, as such Director, inspection fees under said Act upon all such petroleum products received by the plaintiff within said period and threatening to bring suit for the collection of such fees and to prosecute proceedings against this plaintiff and others for violation of said act unless said fees are paid to him.

The said Act to provide for the inspection of petroleum, illuminating oils, gasoline naphtha and similar or like products is not a proper exercise of the police power of the State of Ohio for the reason that the same requires only the inspection of petroleum products which are sold within the State of Ohio, and penalizes only whoever sells or offers for sale within the State of Ohio such petroleum products not inspected and stamped as required by said Act; that large quantities of illuminating oils, gasoline, naphtha and other petroleum products described

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in said act and used and consumed in the State of Ohio are not sold in said State but are sold and purchased outside of the State and imported into the State for consumption, which petroleum products are not subject to inspection under the provisions of said Act; that the said Act is therefore not a safety or health measure in that it does not affect the transportation, use, handling or storage of petroleum products but affects only the sale thereof.

Plaintiff further says that by reason of said discrimination in said Act in favor of illuminating oils, gasoline and other petroleum products sold outside of the State of Ohio for use and consumption within the said State, the same being not subject to the Act, this plaintiff and other dealers in petroleum products within the State of Ohio are handicapped and often prevented from selling their petroleum products to persons within the said State for their own consumption and use within the said State and not for resale, and thereby the plaintiff and other dealers in petroleum products in the State of Ohio are denied the privileges of equal protection guaranteed by the Fourteenth Amendment of the Constitution of the United States.

The said Act affords no information of any useful character to the public and its enforcement performs no useful function for the public and it is a mere pretense of a provision for inspection for the purpose of imposing a tax and collecting a revenue for the State, in that it imposes inspection fees for inspections from which no one derives any benefit and which are entirely disproportionate to the services rendered by the inspectors both as to the character of the work and the time required for inspection.

Said Act to regulate the inspection of oil, gasoline, naphtha and other products of petroleum is not a proper exercise of the police power of the State of Ohio for the reason that danger to life and property from the proper use of kerosene oil, gasoline and naphtha does not exist, and as now manufactured cannot exist. The test provided in said Act for illuminating oils is less than the test of oil now commercially produced. At the present time, and for many years past the price of the volatile con-

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stituents of petroleum has been three or four times that of illuminating oils and therefore all such volatile provisions are carefully and completely separated from the kerosene or illuminating oils universally in manufacture so that danger from low test oils does not and cannot now exist.

The Act provides no test for gasoline, naphtha, petroleum, ether and similar or like substances and affords no provision against danger or fraud, and is of no public benefit, being entirely unnecessary and useless, and is only made for the purpose of collecting revenue for the sale of inspectors and for the State of Ohio.

The total amount of fees and revenues collected, and the necessary expenses disbursed under the provision of said Act for the years 1916 to 1920, both inclusive are as follows:

Years	Receipts	Disbursements	Revenue	Outstanding Accounts
July 1, 1915, to June 30, 1916....	\$ 88,669.92	\$ 54,450.69	\$ 34,219.23	
July 1, 1916, to June 30, 1917....	106,713.98	63,054.33	43,659.65	\$12,113.8
July 1, 1917, to June 30, 1918....	130,591.02	65,419.31	65,171.71	12,731.9
July 1, 1918, to June 30, 1919....	138,171.02	68,043.05	70,127.97	15,888.5
July 1, 1919, to June 30, 1920....	174,911.53	70,221.30	104,690.23	24,850.8
Totals	\$639,057.47	\$321,188.68	\$317,868.79	\$65,285.3

This plaintiff is unable to state what were the total receipts and disbursements collected and paid under said Act in the year 1921, but has reason to believe that because of the discharge of the Deputy State Oil Inspector on or about January 22, 1921, and the abrogation of the office of the State Oil Inspector and because no inspection was made from January 22, 1921, to August 1st, 1921, the inspection fees which the defendant is attempting to collect for said period upon all petroleum products sold during said period whether inspected or not, would be entirely a revenue and profit to the State except for a comparatively small amount required for the salary of the State Inspector of Oils and the expenses of his office at Columbus; that under that the reorganization of this Department as proposed by the defendant the number of deputy oil inspectors will be only about one-third of the

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number employed and engaged during the years 1915 to 1920, inclusive; that therefore the expense of the office will be less and the revenue of the State of Ohio will be greatly increased in the future.

This plaintiff says that quantities of such petroleum products sold each year are increasing year by year and that the revenue derived by the state from the enforcement of said act will increase ever and above the revenue and profit derived in past years if such enforcement is permitted to continue. The said Act and enforcement thereof are illegal, oppressive and contrary to the spirit and letter of the Fourteenth Amendment to the Constitution of the United States which declares that "no state shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States; nor shall any state deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." The said act and its enforcement in so far as the same is applied to petroleum products purchased by this plaintiff from persons outside of the State of Ohio and shipped to it from outside of the State of Ohio are repugnant to the provisions of Article I, Sec. 10, Clause 2 of the Constitution of the United States, which provides as follows:

"No state shall, without the consent of Congress, lay any imposts or duties on imports or exports except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any state on imports or exports shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the Congress."

And are also repugnant to Article I, Sec. 8 of the Constitution of the United States, which provides in the third clause thereof "that Congress shall have power to regulate commerce with foreign nations and among the several states and with the Indian tribes," in that the said Act lays a tax upon such interstate commerce, which must be paid under penalty of fine or imprisonment for failure so to do, before said articles of interstate commerce should be offered for sale within the State of

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Ohio, and amounts to a burden upon and regulation of such interstate commerce; that said Act of May 19, 1915, and its enforcement are repugnant to and in derogation of Sec. 19 of Article 1 of the Constitution of the State of Ohio, which provides:

"Private property shall ever be held inviolate but subservient to the public welfare. When taken in time of war, or other public exigency, imperatively requiring its immediate seizure or for the purpose of making or repairing roads, which shall be open to the public, without charge, a compensation shall be made to the owner, in money, and in all other cases, where private property shall be taken for public use, a compensation therefor shall first be made in money, or first secured by a deposit of money, and such compensation shall be assessed by a jury, without deduction for benefit to any property of the owner."

The said Act and its enforcement are also in derogation of Sees. 2 and 5 of Article 12 of the Constitution of the State of Ohio, which respectively provide as follows.

"Laws shall be passed, taxing by a uniform rule, all moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise, and also all real and personal property according to its true value in money."

"No tax shall be levied, except in pursuance of law; and every law imposing a tax, shall state, distinctly, the object of the same, to which only, it shall be applied."

The defendant and all Deputy Oil Inspectors in the State of Ohio under his authority are required by the terms of said Act to enforce all the provisions thereof, and threaten to, and unless restrained by this court will, enforce and continue to enforce the said Act, and will institute criminal prosecutions against the plaintiff and others persons failing to comply therewith, or failing to pay the inspection fees provided for the period from January 22 to August 1st during which no inspections were made and will thus subject the plaintiff and other persons throughout the State engaged in the petroleum business to unjust and oppressive litigation and to a

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multiplicity of suits and expense incident thereto to the extent that the business of the plaintiff and others in said petroleum business will be incalculably injured, and thereby plaintiff and others similarly situated will be subject to great loss and damage which could not be compensated for in money, and any remedy of the plaintiff at law is wholly inadequate.

In addition to the expense and annoyance arising out of the numerous suits, prosecutions, fines and imprisonments plaintiff's business will be hampered and restrained and its standing and reputation among the people of Ohio and of the United States will be seriously injured in the excess of the sum of three thousand dollars (\$3000), exclusive of interests and costs of this action.

Plaintiff accordingly prays that pending further order of this court the defendant and those acting under his authority may be restrained and enjoined from proceeding to enforce the provisions of said Act of May 19, 1915; from inspecting any mineral or petroleum oil, fluid or substance which is a product of petroleum, or into which petroleum or a product of petroleum enters or is a constituent element, or gasoline or petroleum ether or similar or like substance; from stamping or stenciling packages, tanks, cars or other containers; from demanding or enforcing the payment or collecting fees for, the inspection of oil or gasoline, petroleum ether, or any similar like substances or products from entering into or upon the premises of plaintiff or any vendor or dealer in any of said oils, gasoline, petroleum ethers, or similar or like substances, and from restricting plaintiff and others from selling or offering for sale any of said oils or substances; and from in any manner proceeding to cause the arrest, prosecution or punishment of plaintiff or any other person, for any alleged violation of any of the provisions of said Act of May 19, 1915; and from doing any other thing toward carrying out any of the terms or provisions of said Act or the regulations thereunder; and upon a hearing of this cause upon the merits said Act may be declared to be unconstitutional and void; and that the said restraining order above prayed for may be made perpetual; and that plaintiff may have

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such other general relief as to the court may be deemed just and equitable.

To the end that plaintiff may be relieved of the complaint prayed for herein, it further prays the court to grant it process by subpoena directed to W. H. Phipps, and W. H. Phipps, Director of the Department of Commerce of the State of Ohio, defendant named herein, commanding him to appear and answer, but not under oath, the same being waived, all of the allegations of the bill herein filed, and plaintiff will ever pray, etc.

Chamberlin & Fuller,
Solicitors for Plaintiff.

Dated this 5th day of October, 1921.
(Duly verified.)

NOTICE—Filed October 25, 1921.

To the Honorable Harry L. Davis, Governor of the State of Ohio:

You are hereby notified that the above entitled cause is filed in the United States Southern District Court in the State of Ohio in the office of the clerk thereof, at Columbus, Ohio, and summons issued according to law, a copy of the bill being hereto attached.

This notice is given you pursuant to Judicial Code, Section 266, Act of March 4th, 1913, Chapter 160, 37 Statutes at Large, 1913.

Chamberlin & Fuller,
Solicitors for Plaintiff.

Received this notice of motion on October 10, 1921, and on the same day served a like notice, together with a bill of complaint in this cause, upon the within named the Honorable Harry L. Davis, governor of the State of Ohio, by handing same to him personally at Columbus, Ohio.

M. Deyanney,

U. S. Marshal, S. D. O.

By Louis F. Miller, Deputy.
By J. J. Norrish, Deputy.

Fees \$2.00—Bill
.50—Notice
.06—Mileage

Total \$2.56

NOTICE—Filed October 25, 1921.

To the Honorable John G. Price, Attorney General of the State of Ohio:

You are hereby notified that the above entitled cause is filed in the United States Southern District Court in the State of Ohio in the office of the clerk thereof, at Columbus, Ohio, and summons issued according to law, a copy of the bill being hereto attached.

This notice is given you pursuant to Judicial Code, Section 266, Act of March 4th, 1913, Chapter 160, 37 Statutes at Large, 1013.

Chamberlin & Fuller,
Solicitors for Plaintiff.

Received this notice of motion on October 10, 1921, and on the same day served a like notice, together with a bill of complaint in this cause, upon the within name, the Honorable John J. Price, attorney general of the State of Ohio, by handing same to him personally at Columbus, Ohio.

M. Devanney,
U. S. Marshal, S. D. O.
By Louis F. Miller, Deputy.
By J. Norrish, Deputy.

Fees \$2.00—Bill
.50—Notice
.06—Mileage

Total \$2.56

SUBPOENA IN CHANCERY—Filed October 25, 1921.

The United States of America, Southern District of Ohio, Eastern Division, ss.:

The President of the United States of America.—To the Marshal of the Southern District of Ohio, Greeting:

You are hereby commanded to subpoena W. H. Phipps, and W. H. Phipps as Director of the Department of Commerce of the State of Ohio, citizen of and resident in the State of Ohio, if he be found in your District to be and appear in the District Court of the United States for the Eastern Division of the Southern District of Ohio, aforesaid, at Columbus, to answer a certain Bill in Chancery, filed and exhibited in said court, against him by The Cleveland Refining Company, of Cleveland, Ohio, citizen of and resident in the State of Ohio.

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Hereof you are not to fail under the penalty of the law thence ensuing.

You will make due return of this writ on or before the 25th day of October, A. D. 1921.

Witness the Honorable J. E. Sater, judge of the District Court of the United States, this 5th day of October, A. D. 1921, and in the 146th year of the Independence of the United States of America.

Attest: B. E. Dilley, Clerk.

By G. C. Cropper, Deputy.

Received this writ on the 6th day of October, 1921. And on the 7th day of October, A. D. 1921, served same on the within named W. H. Phipps, as director of the department of commerce of the State of Ohio, by delivering a true copy of this writ, with the endorsements thereon, at his usual place of business, placing same in the hands of Miss Lucie Kizer, private secretary to said W. H. Phipps, by handing same to her personally at Columbus, Ohio.

And on October 13th, 1921, I served same on the within named W. H. Phipps, by delivering to him a true copy of this writ, with the endorsements thereon, by handing same to him personally at Columbus, Ohio.

M. Devanney,

U. S. Marshal, S. D. O.

By L. A. Doyle, Deputy.

By J. Norrish, Deputy.

Fees.

Copy \$0.60

Mileage .18

Service 4.00

Total \$4.78

ANSWER—Filed November 19, 1921.

To the Honorable Judges of Said Court:

For his answer herein the defendant, W. H. Phipps, as Director of the Department of Commerce of the State of Ohio, admits the corporate capacity and place of business of the plaintiff, as alleged in its complaint and the official capacity of this defendant alleged therein; the enactment and legal effect of the act establishing Admin-

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istrative Code for said state, as pleaded by said plaintiff.

It is further admitted that said plaintiff was on May 1, 1920, and has since that time been engaged in the sale and distribution of kerosene and other products of petroleum in the state of Ohio and has invested its capital in the manner and for the purpose as alleged in the complaint, and that it employs a large number of agents and other employes, as further alleged therein; that it buys and ships into the said state of Ohio, from other states of the United States, large quantities of kerosene, oil, gasoline, naphtha and other products of petroleum, in tank cars and in barrels, cans and other packages, and has contracts and arrangements for such goods which it is bound to consummate and can only do so through its established business without great loss to itself; that the General Assembly of Ohio, on the 19th day of May, 1915, passed the act referred to in the plaintiff's complaint, and known as sections 844 et seq. General Code of Ohio, as stated therein. That said act has been enforced and particularly the sections thereof providing for the payment of inspection fees since the taking effect of said act, except as hereinafter appears. That said petroleum products were purchased by the plaintiff and shipped to it from points outside of the State of Ohio and were received by it at its plant.

It is further admitted that the defendant and his assistants and employes, as well as their predecessors, are required by the terms of said act to enforce all of the provisions thereof and that until the filing of this complaint it was the intention of this defendant to enforce said provisions and to institute criminal prosecutions against persons violating it.

Said plaintiff further says that all of the facts stated and allegations contained in said petition are untrue, except as herein specifically admitted to be true.

Answering further this defendant says that the allegations of said plaintiff's complaint at page three, beginning with the second paragraph thereof, are of such character that they cannot truthfully be categorically denied or admitted for the reason that all of the facts in connection therewith are not stated, so that it is neither

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wholly correct or incorrect but the import thereof is not true. The defendant admits that the words quoted from the letter of his predecessor, in regard to inspection of oil, were used, but not in the sense or with the punctuation as appears in the partial quotation in said complaint. The whole of said letter was as follows:

"January 21, 1921.

To Producers, Jobbers and Sellers of Illuminating Oils, Gasoline, Naptha, etc.:

Commencing Monday, January 24th, and continuing until further notice, you may instruct all your agents and representatives to disregard laws relating to inspection of Oils, Gasoline, Naptha, etc., and hold for inspection at least a quart of all products to be inspected, same to be labelled with record showing car number, date of arrival, shipping point, capacity of car or other container, and such other information as will be of use to this Department.

Recognizing the fact that I am violating the Ohio statutes in this order, I find that under the reorganization contemplated by the Administration, that the laws as they exist cannot be carried out with the force allowed me, and I hope to relieve you of embarrassment and expense should you be compelled to comply with the law.

I am assuming full responsibility in this matter pending reorganization under the new Administration.

Your kind indulgence and assistance is requested.

Respectfully,

(Signed) W. H. Walker,

State Inspector of Oils."

That for want of appropriate funds it was practically impossible at that time for this defendant's predecessor to enforce and carry into effect the inspections in the usual and ordinary manner and said inspector intended and attempted thereby to make such inspection by samples taken and held by the owners or shippers as would be possible. Many if not all of said shippers and sellers of such products, complying with said request of the inspector, did take and retain such samples for inspection and billed and sold such products to their

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customers as inspected products, with inspection fees prepaid.

The defendant says that the statement of receipts, disbursements and net revenue, resulting from inspection for the year stated in the plaintiff's complaint at page 6 thereof, is substantially correct, but further says that no part of said net revenue was derived or did accumulate from inspections and fees thereon on such shipments, as described in the plaintiff's petition; that such shipments, including interstate shipments, requiring inspection at destination or place of delivery thereof, resulted in no net revenue or profit to the state in this, that the expense of making such inspection was equal to or greater than the fee collected therefor. Said net revenue or profit resulted solely and entirely from purely intrastate shipments and that the inspection of interstate shipments resulted in a loss to the state.

Said defendant further says that such inspections as were made in the original cars or containers in which such products were shipped into the state, and before the unloading thereof, were so made at the request of and for the accommodation of such shipper for the reason that if unloaded and mixed with other such products in tanks or containers which had previously been inspected, and then inspected with such other products, an inspection fee would be required for the whole mixed contents, thus duplicating the inspection fee; and that the law does not demand or require such inspection in the original container before unloading, but that such practice was followed for the benefit and at the request of such shippers as aforesaid.

Plaintiff therefore alleges that the act complained of is a valid exercise of the police power of the state of Ohio in requiring said inspection and in so far as said law produces revenue through its operation on intrastate petroleum transactions or business it is valid by reason of the legislative power of taxation vested in the General Assembly of said state of Ohio and does not impose a burden on interstate commerce and does not lay any impost or duties upon imports and exports beyond an inspection fee, and is absolutely necessary for executing its inspection laws so far as interstate commerce is concerned.

W. H. Phipps.

Said defendant accordingly prays that said plaintiff's complaint herein be dismissed and for such other orders, decrees and judgments to which he is in equity entitled.

John G. Price,
Attorney General,
Ray Martin,
Special Counsel,
John M. Parks,
Special Counsel,
Solicitors for Defendant.

Dated this 17th day of November, 1921.

DEPOSITION OF W. H. PHIPPS—Filed November 23, 1921.

Caption.

Depositions of sundry witnesses, taken before me, a notary public, of the county of Franklin, State of Ohio, in a cause pending in the District Court of the United States for the Southern District of Ohio, wherein The Cleveland Refining Company, of Cleveland, Ohio, was plaintiff, and W. H. Phipps, and W. H. Phipps, as Director of Commerce of the State of Ohio, were defendants, pursuant to consent of parties made in open court, to be read as evidence in behalf of the defendants on the trial of the aforesaid cause.

Present: C. D. Chamberlin, Solicitor for Plaintiff; John G. Price, John M. Parks and Ray Martin, Solicitors for Defendant.

W. H. Phipps,

of lawful age, being by me first duly sworn, as herein after certified, deposes and says as follows:

By Mr. Martin:

Q. State your name.

A. W. H. Phipps.

Q. You are the defendant, Director of Commerce, are you not?

A. Yes.

Q. Mr. Phipps, I am going to ask you first to state what experience, if any, you have had in connection with the inspection of petroleum products in the State of Ohio?

A. I was state inspector of oils appointed by Gov.

W. H. Phipps.

ernor Harris in May, 1908, and served until June, 1910, in that capacity. I have the Division of Oils under my control, as Director of Commerce, and as such Director of Commerce I have full charge and authority to provide for the inspection of illuminating oils and all substances of a lower flash test than that required for illuminating oils. I have been serving in that capacity since July 1, 1921.

Q. What, if anything, have you done in the capacity which you have just described in the way of districting the state of Ohio in inspection districts?

A. I have divided the state into seventeen districts and have one inspector for each district, save and except district No. 2, which is known to us as the Toledo District.

Q. Handing you Exhibit "A," I will ask you to state whether or not that shows the districting which you have just referred to?

A. It does.

Mr. Martin: We will introduce it in evidence.

Q. Have you made any investigation of the comparative cost between inspections on intrastate shipments and interstate shipments made by your department?

A. I have.

Q. What recourse, if any, have you resorted to in that investigation on your part?

A. I have made an examination of the records of my term of office while I was state inspector of oils, from 1908 to 1910, and in addition to that I have obtained a statement from each of my inspectors as to the cost of inspecting oils, gasoline, etc., at the various points within their several districts.

Q. Have you made or prepared an abstract of those figures and records?

A. I have.

Q. State whether or not the records from which those abstracts were made are the records of actual inspections.

Judge Chamberlin: I object on the ground that inspections made at prior period are immaterial and the further objection that the records are merely speculative and hearsay.

W. H. Phipps.

A. They are, in most instances, not in all.

Q. Do those abstracts show the dates of the inspections referred to?

Judge Chamberlin: I object on the ground that the records themselves are the best evidence.

A. In most instances, yes, in some cases the dates were not exactly given by the deputy inspector.

Q. You may state what method you used in arriving at your conclusion as to the cost of interstate inspections.

Judge Chamberlin: I object on the ground that the question purports to call for a conclusion.

A. I took the individual inspection which an inspector had made, had him make a statement of the entire expense of the trip in making the inspection, including in such cost the time employed by the inspector, computing from that the value of the time employed, and added that to the expense which he was obliged to undergo in making the inspection. I did not add any of the expenses of the general office.

Judge Chamberlin: I object to the answer as being speculative and not a statement of facts.

Q. By expense of inspector state whether or not you mean the actual expense incurred and paid by him.

A. I mean by that, expenses of travel to and from his office or central place of business to the point to which the interstate commerce shipment was made. In those expenses I included his car fare, his meals, if any—car fare both ways—and hotel bill, if any was necessary on the trip. Whatever legitimate expense he was obliged to undergo in making the inspection has been charged, but so far as I know these expenses consist only of transportation and meals, with an occasional charge for a room.

Q. Who reimbursed the inspector for these expenses?

A. The State of Ohio.

Q. Is the inspector paid his expenses in addition to his salary?

A. He is.

Q. Can you now produce those abstracts showing the cost for different districts?

A. I can.

W. H. Phipps.

Judge Chamberlin: I object to the introduction of the abstracts as immaterial, irrelevant and **res ipsa** and as being mere conclusions, and otherwise a result of hearsay, and that the abstracts are not the best evidence.

Q. Handing you defendant's Exhibit 2, I will ask you to state what that is?

A. That refers to the Toledo district.

Q. Handing you defendant's Exhibit 3, please state what it is?

A. That is a report of Clem Cowden for District No. 14.

Q. What is Exhibit 4?

A. That is a report made by Scott Wuichet for District No. 9.

Q. What is Exhibit No. 5?

A. A report made by H. L. Daugherty for District No. 1.

Q. What is Exhibit No. 6?

A. A report made by D. J. Woods, for District No. 7.

Q. What is Exhibit No. 7?

A. A report made by J. B. Lambert for District No. 17.

Q. What is Exhibit 2a?

A. An additional report from the Toledo District.

Q. What is Exhibit No. 8?

A. A report made by William H. Shoop for District No. 3.

Q. What is Exhibit No. 9?

A. A report made by J. C. Hudson for District No. 4.

Q. What is Exhibit No. 10?

A. A report made by F. E. Rose for District No. 5.

Q. What is Exhibit 11?

A. A report made by Charles A. Bower for District No. 10.

Q. What is Exhibit 12?

A. A report made by Harry E. Depue for District No. 6.

Q. What is Exhibit 13?

A. A report made by J. F. Alley for District No. 15.

Q. What is Exhibit 14?

A. A report made by H. S. Miller for District No. 11.

Q. What is Exhibit 15?

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A. A report made by John R. Touley for District No. 13.

Q. What is Exhibit 16?

A. A report made by Ridge A. Cottingham for District 8.

Q. By whom were these reports made?

A. They were made by the several inspectors.

Q. To whom?

A. To me.

Q. Have you made a memorandum or summary of the result of these reports?

A. You mean a general summary?

Q. Yes.

A. No.

Q. You may state what further you did in the way of arriving at a conclusion of the cost of the interstate inspections.

Judge Chamberlin: I object on the ground that the question calls for conclusion of witness.

A. I took the records of the office as submitted to me by some of my inspectors, making a comparison with the strictly rural districts and those of the city districts to determine whether or not the total expense showed and the total fees received from interstate inspections would show a profit to the state.

Q. State whether or not Exhibit 17 and 17a relate to that examination which you made.

Judge Chamberlin: I object for the same reasons.

A. They do.

Q. State whether or not in making the computation contained in Exhibit 17 you included the expense of railroad fare.

A. I did not—neither railroad fare or meals.

Mr. Martin: We offer in evidence defendant's Exhibits 2 to 17a, inclusive.

Judge Chamberlin: I object to the introduction of the exhibits on the ground that they are immaterial, irrelevant and are mere hearsay and that the records are the best evidence.

Q. Handing you report 18, state what that is.

A. This is a continuation of the examination of the cost of making inspections at various points throughout

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the state and was one of the first investigations I made in connection with the proposition.

Judge Chamberlain: I object to the receiving of the statement in evidence on the ground that it is speculative and calls for competence of witness.

Q. Does Exhibit 18 represent interstate shipment inspections?

A. It does absolutely. It represents the interstate inspections, the fees received in each individual inspection, the cost of making the inspection, including the time of the inspector employed.

Q. And is that a so true of 18 and 17a?

A. It is, excepting now in 17 and 17a there were some items omitted.

Q. Items of what?

A. Items of expense omitted which we did not already have.

Q. Which you have already testified to?

A. Yes.

Mr. Martin: We offer the exhibit's Exhibit 18, in evidence.

Judge Chamberlain: Same objections as have been stated as to former exhibits given.

By Mr. Phipps: That is correct and in the 4, 10, 17's. It is the report on Exhibit No. 12.

By Mr. Martin: We offer the exhibit's Exhibit 18, in evidence.

Judge Chamberlain: I object to the same as before, in connection with the 17's and 18's.

Q. Now, Mr. Phipps, what is the record of your district in records of inspections in making a shipment?

A. Yes.

Q. You may state whether or not you have any records and observations in the records of the inspection of petroleum products that are comparable to the inspections generally throughout the state?

A. They are.

Mr. Martin: We introduce the exhibit's Exhibit No. 18.

Judge Chamberlain: I object to the same as before, they are mere hearsay, nothing going beyond the parties to the transaction.

Q. State whether or not from your experience in the

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official inspection of petroleum products those inspections, the original records of which are contained in the series of exhibits, beginning with 18-1, are typical and representative of the inspections throughout the state of Ohio on interstate shipments.

A. They are. I tried as best I could to select all sorts of conditions in the state so that the examples given would be a fair representation of the condition throughout the state.

Q. State if, from your previous experience in such matters, and from such examination as you have made from the records and from such other facts of which you have personal knowledge, you are able to state whether or not the cost of inspecting interstate shipments is greater than the fees collected therefor.

A. I am.

Judge Chamberlin: I object.

Q. Mr. Phipps, independent of those memoranda, I want you to state, from your experience above mentioned, the cost of interstate inspections compared with the fee collected therefor.

Judge Chamberlin: I object, as it calls for the conclusion of the witness. If he has the figures to show—

Mr. Martin: We are offering this witness as an expert witness.

A. Interstate inspections, in so far as expense of those inspections are concerned, show that the fees received for those inspections are considerably less than the cost of the inspections and that as a net sum it would result in the loss to the state of several thousand dollars.

Mr. Martin: I find another of those reports which is marked Exhibit 16b. State what Exhibit 16b is, Mr. Phipps.

A. 16b is the report made by W. A. Okey, inspector for the Marietta district.

Judge Chamberlin: I object for the reasons stated as to former similar questions.

Q. Handing you Exhibit 19, I will ask you to state what it is.

A. These are exhibits taken from the state fire marshal's annual report for the years 1917, 1918, 1919, 1920 and 1921, up to and including the month of October.

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Mr. Martin: We offer No. 19 in evidence.

Judge Chamberlin: I object to the exhibit as being merely hearsay. My further objection is that it is not to the question submitted to the court.

Q. Now, Mr. Phipps, I will ask you what Exhibits 2 to 16b, inclusive, show as to the cost of interstate inspection compared with the amount of fees collected therefor.

A. They show that the cost of interstate inspections considerably exceeds the fees received therefor.

Cross-Examination.

By C. D. Chamberlin:

Q. What period of time do the Exhibits 2 to 18, inclusive, cover?

A. From August 1, 1921, to November 1, 1921.

Q. Do these records show all of the inspections that were made of interstate shipments into the state of Ohio?

A. No, I think not, because we haven't the complete record.

Q. In making inspections of what you term intrastate shipments or deliveries, where are those inspections made?

A. At the refineries.

Q. And just in brief, how are they made?

A. They are made by the inspector who goes there and most of them are made as the cars are filled and the inspector will inspect a large number of cars in one day.

Q. Does he inspect each individual car—does he inspect the oil or gasoline contained in the receiving tank?

A. He is expected to inspect in the receiving tank and then to make certain that the cars are filled from that receiving tank and properly mark them.

Q. Does he superintend the filling of all cars each day on shipments which are made from the receiving tank from interstate commerce?

A. No, he does not.

Q. At the refineries isn't it a fact that considerable quantities of oil are received in tank cars in interstate commerce and unloaded into separate tanks and from there shipped out?

A. I haven't knowledge of that so I couldn't tell you.

Q. Or is it not a fact that cars are received at refineries

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from interstate commerce and then forwarded to points in the state and into state cars?

A. It is not so because I am advised by all the companies when they have shipments coming outside of the state into the state that a certain car has been received from some place outside the state and is being shipped into the state, and asking me to see that it is properly inspected, upon its arrival at the point of destination. So far as I know, and I think it is correct, the interstate shipments are never sent to the refinery and then sent out to some point inside the state in the same container.

Q. If it be a fact that that is the practice of some of the refineries located within the state, you do not know it?

A. My observation is to the contrary, because they notify me of the shipment from some point outside the state to some point within the state, as these cards here indicate, and I promptly notify the inspector.

Q. Do you know, Mr. Phipps, what comparative volume of oil is manufactured—oil and gasoline, subject to inspection, is manufactured and sold within the state as compared with the total amount of oil and gasoline consumed in the state?

A. I do not of my own knowledge. I know what statements have been made to me by refiners, but I have no personal knowledge.

Q. As an expert in these matters, would you say that Ohio produces a sufficient amount for consumption or is there a very large importation of oil—refined oil and gasoline—from other states?

Mr. Parks: I object.

A. There is a large shipment into the state, quite large, but on the contrary there is also a large shipment out of the state by these refiners, which depends upon what the particular conditions are that cause the shipments into the state. Sometimes the Standard Oil Company will ship from some point west of the Mississippi into the state of Ohio, sometimes from Indiana into the state of Ohio, and at the same time they may be shipping some of their products out of the state; so for me to say exactly as to the shipments, I can't tell you. My impression is that the amount refined in Ohio exceeds the consumption.

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Q. Have you made any ascertainment of the actual cost of inspection to the entire revenue received on interstate shipments at any period?

A. Not as a definite summing up of the whole matter, but as taken by districts I have. I have not summed up the entire state to see what the cost of inspection of the interstate shipments would be—I mean the total cost; I have only taken it by districts and for a short period of time since I came into office this last time. I would not be justified in making a conclusion so that I could give all the figures and state the exact amount, when my term of office covers only a period of a few months here. I have undertaken to show by districts, and by the experience that the inspector has undergone in each instance in every point in his district, whether or not there was a loss or profit in interstate shipments, and I have gathered the entire state in that way.

Q. What would you say as to the facts in each of those exhibits, 2 to 18, as to the certainty of their being inspections made of interstate shipments?

A. I feel confident that they are all interstate shipments because I had my inspectors make a statement only as to interstate shipments and to make certain that they knew what I meant I called some of them into the office and told them what I wanted.

Q. There is no identification of these being interstate shipments, as shown in these exhibits?

A. No.

Q. Isn't it possible that some of them might be from a refinery within this state? From a point within the state to another point within the state?

A. I do not think it is for the reason that I gave specific instructions, besides that the inspectors, at every point where there is a refinery, are instructed to inspect all the petroleum products that go out of those refineries to points within the state and that such cars or shipments shall bear the proper certificate of inspection, so that when they arrive at destination no notice is given to the inspector to inspect those shipments and they are instructed not to make any inspection of any car that bears a certificate of any Ohio inspector.

Q. Is it in your opinion possible for the deputy in-

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spector in each district to inspect all of the oil for inspection within that district?

A. That is what we are aiming to do. I would be very frank to say to you, if I had my way we would increase the number of inspectors very largely and that would of course be an increase of expense to the state.

Q. Then as a matter of fact you wouldn't say that the records are accurate as to the total amount of oils sold within the state?

A. All I could give you are reports of my inspectors in the state. I could not say they are absolutely accurate. I think they show everything that they inspect. The first month we found that our inspectors did not report all the inspections that some of the oil companies reported as having sent out and that was by reason of the fact that some of the inspectors were not on duty as they were not all appointed at once, and being new in the business they were not fully acquainted with the duties of the office and especially points of shipments, and it was because of that I asked the refiners to notify my office each time a shipment was made.

Q. Do they do that?

A. All I can tell you, we get notifications by whole pages from refiners.

Q. What would you say as a direct answer to my question that they do not?

A. My impression is that they are notifying them. I have given them credit that they are being honest with me about it.

Q. During this period, August 1 to November 1, 1921, is there any information that you have you can give as to the total cost of inspection of oils, both inter and intra state?

A. I would have to gather it together. It isn't available without gathering it up. You understand that this inspection business has been in contest ever since I have been in office. If I would say right now what the expense has been compared with the receipts, the expense of the whole business would far exceed the entire receipts that the state should have, but a large number of companies have not paid the state because of this pending litigation.

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Q. In making up the estimates which you have made, I notice you refer to the time expended at sixty cents per hour. Is that the price you paid inspectors?

A. They receive so much per annum, that is, figured on the basis of an eight hour day, and so many days in the year. That figures more days in the year actually than we perform labor, because we didn't figure it down, deducting holidays, etc. The rate of sixty cents per hour is figured on the basis of three hundred work days in the year.

Q. Each deputy inspector is limited to \$1200.00 a year?

A. That has been changed to \$1500.00 now.

Q. Then the deputy inspector, who has made all of these trips in the several districts, receives compensation as provided in the statutes of three cents per barrel and his traveling expenses, with a limit of \$1500.00.

A. No, they are employed by the state on a stipulated salary. Simply a specified salary. The new law provides it and they receive the \$1500.00 no matter whether they inspect half that amount or twice that amount. They get none of the fees at all, but the fees are turned into the state. Before there were a large number of deputies throughout the state, he received at one time simply the inspection fees that their inspection permitted them to receive. Later it was changed to a minimum of \$800.00 and a maximum of \$1200.00, and so much for expense.

Q. Is it possible for you and your deputies to absolutely determine the inspections of interstate and intrastate transactions?

A. Yes, absolutely.

Q. There is no account kept separately of the fees for intrastate transactions?

A. In this way. Each month every inspector makes his report. He makes a report of, we will say, car so and so, shipped from such and such a point outside of Ohio, to a certain point in Ohio and he makes his report on that. The fees that the state are entitled to for that inspection is expense for making examination, etc. Under the present law he makes no inspections on the interstate or intrastate shipments from the refineries of Ohio because

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all of them are inspected from the refineries and outside inspectors have nothing to do with that.

Q. If all of the oil were inspected at the refineries of the state, and there was no interstate shipments of oil to inspect—

A. I could do it that way with five inspectors.

Q. And the cost of inspection would be very much less?

A. Very much less if there were no interstate shipments.

Q. What amount of time is necessary to make a single inspection by an inspector?

A. Well, a single inspection of oil used in the Foster Cup, when he gets to the point of inspection, can be done in twenty minutes.

Q. In the inspection of gasoline there is practically no cost?

A. In the inspection of gasoline, we are obliged to determine it is gasoline; to see that it is properly marked—to mark it dangerous so there is no trouble, so somebody does not use gasoline for coal oil. And in that connection permit me to say that very recently here in a Columbus district one of the companies made a mistake and they dumped half a car, before my inspector arrived, into a tank supposing it to be coal oil. It happened to be gasoline. My inspector used this Foster cup to make the inspection and it melted all to pieces.

Mr. Martin: Q. Mr. Phipps, from your previous experience in this department, you may state how the net result, so far as profit or loss on interstate inspections, for the time embraced in the period mentioned in the petition, compared with such net result for the period involved in these abstracts which you have made.

Judge Chamberlin: I object.

A. I would say that so long as there was a definite salary fixed for inspectors, that in many instances it resulted in a loss; that where the inspection fee was the property of the inspector of course there was neither loss nor gain to the state.

Q. How does the net result of profit or loss on interstate shipments as contained in your abstracts compare with such net result for the rest of the period stated in the

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petition, that the inspectors have been on straight salaries.

A. The comparison will show that it is more expensive now than it was before because of the fact that the salary of the inspector is now fixed at \$1500.00.

Q. State whether or not in your judgment interstate inspection has resulted in a profit to the state from the time that the inspectors were put on a straight salary.

A. I don't think the inspection of interstate shipments into Ohio ever at any time showed a profit to the state.

Q. I don't know whether you understood my former question or not, but I want now to ask you if the records to which you have referred, and from which these so-called abstracts were made, are original and official records?

A. They are.

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District No. 1—Harry L. Dougherty
 District No. 2—W. J. Hazlewood
 District No. 2a—C. R. Vena
 District No. 3—Wm. F. Schooler
 District No. 4—J. C. Hudson
 District No. 5—F. E. Rose
 District No. 6—Harry E. Depue
 District No. 7—D. J. Woods
 District No. 8—Ridge A. Cottingham

District No. 9—Scott Wuichet
 District No. 10—Chas. A. Bower
 District No. 11—S. R. Burklew
 District No. 12—Geo. W. Roche
 District No. 13—John R. Townley
 District No. 14—Clem Couden
 District No. 15—J. F. Alkey
 District No. 16—W. A. Olley
 District No. 17—J. B. Lambert



DEFENDANT'S EXHIBIT No. 3

District No. 14—Clem Chowden.

Town Where Inspection is Made	Round Trip Miles	% of 600 Cost to Make Trip	Fare Auto	Round Trip	% Meals	Hotel Room	Bus or Street Car	Telephone	Storage	% Total Cost	% Fees	Loss	Tax
Lebanon	20	3	\$3.00	Auto	1.60	.50				5.10	4.80	3.30	
Franklin	40	8	4.80	Auto	3.20	.50				8.50	4.80	3.70	
Waynesville	30	3	1.80	R. R.	1.12					2.92	4.80		1.88
Wilmington	40	4	2.40	R. R.	1.54	.75				4.69	4.80		.11
Sabina	60	8	4.80	R. R.	2.40	.50				7.70	4.80	2.90	
Greensfield	130	11	6.60	R. R.	5.95	.75				13.30	4.80	8.50	
Leesburg	112	11	6.60	R. R.	5.25	.50				12.35	4.80	7.55	.30
Blanchester	20	4	2.40	Auto	1.60	.50				4.50	4.80		
Lynchburg	74	10	6.00	R. R.	2.95	.50				9.45	4.80	4.65	
Hillsboro	104	10	6.00	R. R.	4.00	.75				10.75	4.80	5.95	
Mason	20	5	3.00	Auto	1.60	.50				5.10	4.80		.30
Morrow	12	2	1.20							1.20	4.80		3.60
Amelia	102	10	6.00	R. R.	4.10	.50				10.60	4.80	5.80	
Felicity	140	10	6.00	R. R.	4.85	.50				11.35	4.80	6.56	
Georgetown	148	10	6.00	R. R.	5.20	.50				11.50	4.80	6.90	
Williamsburg	102	10	6.00	R. R.	4.10	.50				10.60	4.80	5.80	
Mt. Orch	114	10	6.00	R. R.	4.72	.50				11.22	4.80	6.42	
Winchester	150	10	6.00	R. R.	5.96	.50				12.46	4.80	7.66	
Peebles	180	11	6.60	R. R.	7.10	.50				14.20	4.80	9.40	

DEFENDANT'S EXHIBIT No. 4

Inspection Points, Charges, Mileage, etc., in 9th District, Division of Oil Inspection—Scott Wuchet, Inspector, Dayton, Ohio

Town Where Inspection is Made	Car Fare One Way	Street or Car	Mileage	Hotel Room	Wages (\$1.10 per day)	Livery or Taxi	Fee	Total Cost	Loss	Gain
Plain City	\$3.41	.60		\$1.50	\$4.10		\$4.80	\$13.02	\$8.22	
Jamestown	.99	.50			4.10		4.80	8.08	3.28	
Marysville	2.07	.60		1.50	4.10		4.80	12.59	7.79	
Mc. Sterling	1.32			1.50	4.10		4.80	12.49	7.69	
Xenia	.40				2.05		4.80	3.60		1.20
Miamisburg	.15				1.03		4.80	2.08		2.72
Springfield	.89	.60			2.05		4.80	5.93	1.13	
Urbana	1.15				2.05		4.80	5.85	1.05	
Cedarville	.89				2.05		4.80	5.93	1.13	
Brookville	.50				2.05		4.80	4.55		.25
London	1.59				4.10		4.80	9.53	4.73	
Mechanicsburg	1.65				4.10		4.80	9.65	4.85	
Tremont City	1.25				4.10		4.80	8.10	3.30	
St. Paris	1.71				4.10		4.80	9.77	4.97	
S. Charleston	1.35				2.05		4.80	6.25	1.45	
Lilly Chapel	2.06				4.10		4.80	10.47	5.67	
New Carlisle	.55	.50			4.10		4.80	8.45	3.65	
Yellow Springs	.65				2.05		4.80	4.85	.05	.25
Germantown		.65			2.05		4.80	4.55		
W. Jefferson	2.18	.60			4.10		4.80	11.31	6.50	
Broadway	2.37				4.10		4.80	11.09	6.29	
Richwood	2.70			1.50	4.10		4.80	13.25	8.45	
N. Lewisburg	1.93				4.10		4.80	10.21	5.41	
S. Solon	1.77				4.10		4.80	9.89	5.09	

No. 5

Statement of Mileage, Time Employed, Travel Expense, etc., to and from Points in District No. 1, H. L. Dougherty, Ottawa, Inspector.

Town Where Inspection is Made	Round Trip Car Fare	Bus or Street Car	Meals	Hotel	Time	Pro Rata Wages	Total Cost	Fees	Loss	Gain
Columbus Grove	\$.40		\$.65		1 da.	\$2.05	\$3.10	\$4.80		\$1.70
Defiance	2.76	1.00	1.50		1 da.	4.10	9.36	4.80	4.56	
Bryan	2.76	4.00	2.25	2.00	2 da.	8.20	19.21	4.80	14.41	
Continental	1.48	.25	1.00		1 da.	4.10	6.83	4.80	2.03	
Van Wert	2.90	1.00	1.50		1 da.	4.10	9.50	4.80	4.70	
Napoleon	2.06	1.00	2.00	1.50	2 da.	8.20	14.76	4.80	9.96	
Deshler	.90		.65		1 da.	2.05	3.60	4.80		1.20
Haviland	2.68	2.00	1.00		1 da.	4.10	9.78	4.80	4.98	
Paulding	2.68	1.50	1.50		1 da.	4.10	9.78	4.80	4.98	

No. 6

Statement of Mileage, Time Employed, Travel Expenses, etc., to and from Points in District No. 7, D. J. Woods, Inspector, Youngstown.

Point Where Inspection is Made	Round Trip Miles	Round Trip Fare	Hours to Make Trip	Pro Rate Wages	Meals	Hotel	Miscellaneous Taxi, Street Car, Telephone, etc.	Total Cost	Average Per Loss	Gain
Oberlin	222	\$6.88	16	\$9.60	\$3.20	\$1.50	.18	\$21.36	\$4.80	\$16.56
Lorain	204	6.08	16	9.60	3.20	1.50	.28	20.66	4.80	15.86
Canton	111	4.02	10	6.00	1.60		.30	11.92	4.80	7.12
Akron	108	3.84	8	4.80	1.60		.28	10.52	4.80	5.72
Wooster	240	6.46	12	7.20	2.40		.18	16.24	4.80	11.44
Massillon	127	4.60	10	6.00	1.60		.28	12.48	4.80	7.68
Hudson	88	3.36	8	4.80	1.60		.18	9.94	4.80	5.16
Hartsville	129	4.72	10	6.00	1.60		.30	12.62	4.80	7.82
Medina	214	6.18	12	7.20	2.40		.18	15.96	4.80	11.96
Alliance	94	2.90	8	4.80	1.60		.28	9.58	4.80	4.78
Orville	156	5.62	12	7.20	2.40		.18	15.40	4.80	10.60
Youngstown			3	1.80			.20	2.00	4.80	2.80
Creston	158	5.64	12	7.20	2.40		.18	15.42	4.80	10.62

Report of Wm. F. Schooler, Inspector as to Time and Expense Involved in Inspecting Petroleum Products.

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Town	Miles	Time Involved Hours	Time Used %	Pure Traction %	Exp. R. R.	Street Car or Bus	Taxi Drivey	Mals %	Telephone %	Hour	Total Cost
Fremont	99	4	2.40	1.15				.50	.10		\$3.75
Fostoria	73	4	2.20	1.55				.50	.25		6.90
Bellevue	59	4	2.0	1.45			.25	.50	.30		7.30
Huron	61	4	2.0	2.10				.50	.40		8.10
Sandusky	99	4	2.0	1.85			.25	.50	.35		7.75
Norwell	80	4	2.0	2.05				.50	.35		7.70
Woodville	12	4	1.80	.55				.50	.20		2.35
Tiffin	40	4	2.0		81.46			.50	.25		6.41
Carey via Porterville	84	4	2.0		71.30		4.60	.50	.30		11.90
Upper Sandusky	134	4	2.0		4.84		.25	.50	.30		10.09
Bucyrus	100	4	2.0		4.44		.25	.50	.40		9.79
Galion	161	4	2.0		5.66			.50	.45	\$2.00	26.91
Mansfield	127	4	2.0		4.58		.25	.50	.50		10.63
Loudonville	165	4	2.0		5.96			.50	.65	2.00	25.41
Ashland	167	4	2.0		5.78			.50	.55	2.00	27.13
Shelby	163	4	2.0		5.66			.50	.35	2.00	26.81
Bellville	155	4	2.0		5.58			.50	.60	2.00	26.98
Willard	90	4	2.0		3.24			.50	.30		8.24
New London	150	4	2.0		5.40			1.00	.45	2.00	19.65

The above is a true statement.

Very truly yours,

Average inspection fee is \$4.80, or somewhere near \$5.00.

Many times the inspector is unable to find the owner of the petroleum product to be inspected and two trips must be made to make the inspection.

Wm. F. Schooler, Inspector.

No. 9

Statement of Mileage, Time Employed, Travel Expense, etc., to and from points in District No. 4, —J. C. Hudson, Inspector.

Point Where Inspection is Made	Round Trip	Bus or Auto	Meals	Hotel	Miscellaneous	Time	Trav. Rate	Total	Average Fee	Loss	Gain
Bratenohl Village—N.Y.C.R.R.	16 miles	\$1.28	.50			5 hrs.	\$3.00	\$4.78	\$4.50	\$.28	
E. Cleveland—Standard Coit Road	16 miles	1.28	.50			3 hrs.	1.80	3.58	4.50		\$.92
Rocky River	16 miles	1.28	.50			4 hrs.	2.40	4.18	4.50		.32
Berea Village	36 miles	2.88	.50			5 hrs.	3.00	6.38	4.50	1.88	
South Brooklyn	18 miles	1.44	.50			4 1/2 hrs.	2.70	4.64	4.50	.14	
Brecksville	30 miles	2.40	.50			5 hrs.	3.00	5.90	4.50	1.40	
Bedford	24 miles	1.92	.50			5 hrs.	3.00	5.42	4.50	.92	
Chagrin Falls	36 miles	2.88	.50			5 hrs.	3.00	6.38	4.50	1.88	
American Steel & Wire—Coke Works	12 miles	.96	.50			4 hrs.	2.40	3.86	4.50		.64
Standard Oil Co.											
No. 1 Works—No. 2 Works	10 miles	.80	.50			6 hrs.	3.60	4.90	4.50	.40	
Barrell-house											
National Refining Co.											
Brooks Oil Co.	16 miles	1.28	.50			5 hrs.	3.00	4.78	4.50	.28	
Columbia Oil Co.											
Western Reserve Oil Co.											
Midcontinent Producers & Ref.	20 miles	1.60	.50			6 hrs.	3.60	5.70	4.50	1.20	
Labrie Oil Co.											
Great Western Oil Co.											
Canfield Oil Co.	8 miles	.64	.50			4 hrs.	2.40	3.54	4.50		.96
Net Loss		\$20.64	\$6.50				\$36.90	\$64.04	\$58.50	\$8.38	\$2.84
									5.54		
								64.04	64.04		

Inspection Fees, Charges, etc., on Inspection of Petroleum Products in District No. 5.—F. E. Rose, Warren, Ohio, Inspector.

Town Where Inspection is Made	Round Trip	Hack or Street Car	Meals	Auto	Hotel Room	Wages	Fuel or Taxi	Total Cost	Average Fees	Loss	Gain
Ashtabula	\$3.92	.50	.50			\$1.10		\$9.32	\$4.80	\$4.52	
Cornell	3.92	1.00	1.50			4.10		9.82	4.80	5.12	
Jefferson			.75	4.00		2.05		6.90	4.80	2.00	
Andover			.75	4.00		2.05		6.80	1.80	2.00	
Rock Creek			.75	3.20		2.05		6.00	4.80	1.20	
Kent	5.20		.75			2.05		8.00	4.80	3.20	
Ravenna	3.20		.75			2.05		6.00	4.80	1.20	
Garrettsville	2.40		.75		2.00	2.05		5.20	4.80	.40	
Parisville	3.26		2.50			4.10		11.86	4.80	7.06	
Willoughby	3.26		1.50			4.10		8.86	4.80	4.06	
Madison	3.26		1.50			4.10		8.86	4.80	4.06	
Kinsman	3.52		.75			2.05		6.32	4.80	1.52	
Cortland	1.60		.75			2.05		4.40	4.80		.40
W. Farmington	3.20		.75			2.05		9.95	4.80	5.15	
Niles	.96		.75			2.05		3.76	4.80		1.04
Warren, (Local) average cost of inspection per car \$1.71 to 2.00											
Barton	1.94	1.60	1.50			4.10		8.64	4.80	3.84	
Chardon	4.80		1.50			4.10		10.40	4.80	5.60	

No. 11

Statement of Mileage, Time Employed, Travel Expense, etc., to and from Points in District No. 10, —Chas. A. Bower, Columbus, Inspector.

Town Where Inspection is Made	Mileage @ 8c Auto	Car Fare	Street Car or Bus	Meals	Hotel Room	Pro Rate Wages	Livery or Taxi	Total Cost	Fees	Loss	Gain
Mt. Gilead		\$3.54	12c & 30	\$1.50		\$4.10	\$21.80	\$12.36	\$4.80	\$7.56	
Newark		2.60		1.50		4.10	1.75	9.95	4.80	5.15	
Sunbury	4.80			.75		4.10		9.65	4.80	4.85	
Ashley	6.00			.75		4.10		10.85	4.80	6.08	
Maynard Ave. (Cols.) Standard Oil Co.	1.40					4.10		5.50	4.80	.70	
Seagrave Co. (Colg).	2.00					4.10		6.10	4.80	1.30	
Pataskala	3.50			.75		4.10		8.35	4.80	3.55	
Canal Winchester	2.60			.75		4.10		7.45	4.80	2.65	
Hilliards	2.00			.75		4.10		6.85	4.80	2.05	
W. Jefferson	2.56			.75		4.10		7.41	4.80	2.61	
Utica	1.20	3.68		1.50		4.10		10.48	4.80	5.68	
Livingston Ave. (Cols.) Standard Oil Co.	2.40			.75		2.05		5.20	4.80	.40	

No. 13

Statement of Expense for Mileage, Time Consumed, Pro Rata Wages, Meals, etc., in 15th District., J. F. Alley, Inspector,
Lyndon, Ohio.

	Point Where Inspection is Made		Miles		At 8c Per Mile	Time Consumed	Pro Rata Wage @ 60c	Meals	Total	Average Per	Loss	Gain
Logan (Round trip)			160		\$12.80	10 hrs.	\$6.00	\$1.50	\$20.30	\$4.80	\$15.50	
Baltimore			140		11.20	10 hrs.	6.00	1.50	18.70	4.80	13.90	
Lancaster			120		9.60	9 hrs.	5.40	1.50	16.50	4.80	11.70	
Ashville			100		8.00	8 hrs.	4.80	1.00	13.80	4.80	9.00	
Circleville			80		6.40	7 hrs.	4.20	1.00	11.60	4.80	6.80	
Waverly			72		5.76	7 hrs.	4.20	1.00	10.96	4.80	6.16	
Kingsen			60		4.80	5 hrs.	3.00	1.00	8.80	4.80	4.00	
New Holland			60		4.80	5 hrs.	3.00	1.00	8.80	4.80	4.00	
Washington C. H.			40		3.20	4 hrs.	2.90	.50	6.60	4.80	1.80	
Bainbridge			22		1.76	3 hrs.	1.80		3.56	4.80		1.24
Frankfort			16		1.28	2 hrs.	1.16		2.38	4.80		2.42
Roxabelle			14		1.12	2 hrs.	1.10		2.22	4.80		2.58

Monthly cost for stationery and postage \$10.00.

No. 14

Inspection Points, Charges, Mileage, etc., in 11th District, Division of Oil Inspection, H. S. Miller, Zanesville, Inspector.

Town Where Inspection is Made	Miles	Time Involved	Time Cost @ 60c hr.	Traction or R. R. Fare	Street Car or Bus	Meals	Livery or Taxi cab	Telephone	Hotel	Total Cost	Fee	Loss	Gain
Millersburg	110.4	12 1/4 hrs.	\$7.35	\$4.02	3	\$1.25				\$12.74	\$4.80	\$7.94	
Killbuck	99	12 1/4 hrs.	7.35	3.60	12	1.25				12.32	4.80	7.52	
Walonding	83	12 1/4 hrs.	7.35	2.30	12	1.25	4.00			15.02	4.80	11.22	
Coshocton	60	7 1/4 hrs.	4.35	2.18	12 & 25	.75				7.65	4.80	2.80	
Trinway	32.2	7 hrs.	4.20	1.18	12	.75				6.25	4.80	1.45	
Dresden	30	7 hrs.	4.20	1.06	12	.75				6.13	4.80	1.33	
New Lexington	43.6	8 hrs.	4.80	1.60	12 & 15	.75				7.42	4.80	2.62	
Corning	66	7 2/3 hrs.	4.60	2.40	12	.75				7.87	4.80	3.07	
Somerses	64	8 hrs.	4.80	1.60	12	.75	1.00			8.27	4.80	3.47	
Shawnee	86	11 hrs.	6.60	2.35	12 & 15	1.25	1.00			11.47	4.80	6.67	
Malta	53	(Or up to 9 1/3 hrs.)											
McConnelsville	54	5 1/2 hrs.	3.30	1.92	12	.75				6.09	4.80	1.29	
Stockport	72	9 1/3 hrs.	5.60	1.92	12 & 50	1.25				9.39	4.80	4.59	
New Concord	36	5 1/2 hrs.	3.30	2.60	12	.75	(or more)			6.77	4.80	1.97	
Crooksville	26.4	5 hrs.	3.00	.80	12	.75	1.00	.25		4.37	4.80	.43	
Zanesville		5 hrs.	3.00		12	.75		.25		4.17	4.80	.63	
													4.68

The average fee on an average car is \$4.80. The above figures under the "Total Cost" column indicate average cost of trips to make inspection of cars shipped into the state from points without the state. The resulting deficit is apparent.

No. 15

Statement of Mileage, Time Employed, Travel Expense, etc., to and from Points in District No. 13, —John R. Townley, Inspector.

Point Where Inspection is Made	Round Trip Car Fare	Fare or Auto Street Car	Meals	Hotel	Miscellaneous	Time	Wages	Cost Total	Average Per	Loss	Gain
Spring Grove Ave.	\$1.92		.50			4 hrs.	\$2.40	\$4.82	4.80	.02	
Florence Ave.	1.92		.50			4 hr.	2.40	4.82	4.80	.02	
North Bend, Ohio	3.36		.50			hr.	4.20	8.06	4.80	3.26	
Shandon, Ohio	3.84		.50			hr.	4.80	9.14	4.80	4.34	
Mt. Washington, Ohio	3.84		.50			6 hr.	3.60	7.14	4.80	2.34	
Lockland, Ohio	3.24		.50			7 hr.	4.20	7.94	4.80	3.14	
Norwood, Ohio	2.60		.50			5 hr.	3.00	5.50	4.80	.70	
Merchants Oil Co., Reading Road	1.60		.50			3 hr.	1.80	3.90	4.80		.90
Phillips Carey Mfg. Co., Cartilage Pike	2.88		.50			6 hr.	3.60	6.98	4.80	2.18	
Ohio Refining Co., Bond Hill	2.40		.50			6 hr.	3.60	6.50	4.80	1.70	
Tenn. & Ky. Indep. Oil Co., Reading	2.40		.50			6 hr.	3.60	6.50	4.80	1.70	
Cincinnati Oil Works Co., Eggleson Ave.											
L. & S. Garage, 124 Water St.	1.92		.50			4 hr.	2.40	4.82	4.80	.02	
1761 Elmore St., Wilburine Oil Wks.	1.92		.50			4 hr.	2.40	4.82	4.80	.02	
Refiners Oil Co., South & Depot Sts.	.96					2 hr.	1.50	2.46	4.80	.02	
United Service Stations, N. Norwood	2.40		.50			6 hr.	3.60	6.50	4.80	1.70	1.34
Ivorydale, Caldwell & Taylor	2.08		.50			5 hr.	3.00	5.58			
Middletown, Ohio	6.64					8 hr.	4.80	12.94	4.80	8.14	
Hamilton, Ohio	5.36					7 hr.	4.20	10.31	4.80	5.51	
Oxford, Ohio	4.28					8 hr.	4.80	12.83	4.80	8.03	

The average fee is computed on an average of 160 fifty gallon barrels, which, in most instances, is the size of the tank car.

Statement of Legitimate Expense to Make an Average Inspection in District No. 8. Ridge A. Cottingham, Inspector, Eaton, Ohio.

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Point Where Inspection is Made	Round Trip Miles	Cost of Trip per mile	Fare Round Trip	Meals	Hotel Room	Bus or Street Car	Telephone	Storage	Total Total	Average Per Mile	Loss	Gain
Canden	20	1.80	.36	.75					93.21	4.80		\$1.59
W. Alexandria	12	1.80	.30	.75					21.85	1.80		1.95
Greenville	66	4.80	2.48	1.20		.50	.30		11.08	4.80	6.24	
Piqua	116	4.80	3.08	.60		.20			8.68	4.80	3.86	
Troy	92	4.20	2.60	.60					7.40	4.80	2.60	
Sidney	128	5.40	3.78	1.20		.25	.50	.50	11.13	4.80	6.33	
St. Marys	148	12.00	5.30	1.80	1.00		.40	.50	21.00	4.80	16.20	
Celina	132	6.60	4.68	1.20			.55		13.03	4.80	8.23	
Arcadium	110	3.60	3.02	.60					7.92	4.80	2.42	
Ansonia	84	6.60	3.16	1.20					10.90	4.80	6.10	
Minster	168	12.00	5.90	1.80	1.00		.35	.50	21.55	4.80	16.75	
Coldwater	120	6.60	4.56	1.20			.70		13.06	4.80	8.26	
Manchester	38	6.60	1.34	1.20					9.14	4.80	4.34	
Bradford	106	4.80	4.40	1.20		.50			10.90	4.80	6.10	
Lewisburg	26	6.60	.84	1.20					8.64	4.80	3.84	
New Madison	36	2.40	2.88	.60					5.88	4.80	1.08	
Hollansburg	48	2.70	3.84	.60					7.14	4.80	2.34	
West Milton	86	4.20	2.48	.60		.50			7.78	4.80	2.98	
Versailles	130	6.60	4.54	1.20					12.34	4.80	7.54	
Anna	142	4.80	4.32	1.80	1.00		.55	.50	12.97	4.80	8.17	
Jackson	172	6.00	6.72	1.80	1.00		.65	.50	16.67	4.80	11.87	
Ft. Recovery	128	6.60	5.46	1.20			.50		13.76	4.80	18.96	
Wapakoneta	168	7.20	5.08	1.80	1.00	.50	.70	.50	16.78	4.80	11.98	
Union City	98	6.60	3.46	1.20		.50			11.76	4.80	6.96	
Eaton		1.20				.75			1.95	4.80		2.84

No. 16A

Mr. W. H. Phipps,
Director Department of Commerce,
Columbus, Ohio.

Dear Sir:

Below is statement showing mileage travelled by me and resultant railroad and trolley fare and automobile expense, also cost of meals to each point where I have made inspection of petroleum products that were shipped into Ohio from outside states, as per instructions to me contained in your letter of November 4, 1921.

	Miles Railroad	Fare
To East Liverpool and return Station in East End of City	52	\$1.76
Breakfast \$0.40 - Dinner \$1.00	2 Trolley	.10
Leave home 6:30 A. M., arrive home 3:30 P. M.	9 hrs. @ \$0.50	1.40
		4.50
To Salem and return	124 R. R. to E. Liverpool Trolley to Salem	1.76
Breakfast \$0.45; Dinner \$1.00		2.60
Leave home 6:30 A. M., arrive home 4:00 P. M.	9 1/2 hrs. @ \$0.50	1.45
		4.75
To East Palestine and return	136 via Rochester Pa.,	
Breakfast \$0.40; Dinner \$1.00; Supper \$0.75	13 hrs. @ \$0.50	4.86
Leave home 6:30 A. M., arrive home 7:30 P. M.		2.15
		6.50
To Sugar Creek and return	174 R. R. to Deminon Trolley to Beach City	3.42
Leave home 5:30 A. M., arrive home 9:20 P. M.	R. R. to Sugar Creek	1.10
Breakfast \$0.45; Dinner \$1.00; Supper \$0.75	16 hrs. @ \$0.50	.92
To Uhrichsville and return		8.00
		2.20
		3.52
Dinner	98 Railroad Trolley	.20
Leave home 10:15 A. M., arrive home 5:15	7 hrs. @ \$0.50	1.00
		3.50
To Cadiz and return	62 Railroad	2.24
Dinner		1.00
Leave home 10:15 A. M., arrive home 2:38 P. M.	4 hrs. 23 min.	4.15
		7.39

Steubenville, Ohio, November 7, 1921.

To Jewett and return				
Supper			1.96	
Leave home 1:30 arrive home 6:30			.75	
		42 Railroad	2.50	5.21
		5 hrs. @ \$0.50		
To Newcomertown and return				
Leave home 5:30 A. M., arrive home 3:30 P. M.		130 Railroad	4.68	
Breakfast \$0.45; Dinner \$1.00		10 hrs. @ \$0.50	5.00	
			1.45	11.13
To Salineville and return				
Leave home 6:30, arrive home 7:30 P. M.		70 C. & P. R. R.	2.52	
Breakfast \$0.40; Dinner \$1.00; Supper \$0.75		13 hrs. @ \$0.50	6.50	
			2.15	11.17
Steubenville				
Time of inspection		3 hrs.	1.50	1.50
10 Points where inspection made				
Average number of barrels inspected at each point		Total	\$92.01	
Average inspection fee each point at \$0.03		300	\$92.01	
		.03 a barrel		

Total inspection fees for the 10 points

The \$0.50 per hour is based on an eight hour day at \$4.00 per day or \$125.00 per month. Where more than eight hours per day are employed on inspection the \$0.50 per hour is carried out for the reason that on some days no inspections are made and the salary expense of \$0.50 per hour goes on and it is at the end of the month and justifies this estimate.

Assuring you that this statement is made from a careful study of my records and is accurate to the best of my knowledge and ability, I am

Respectfully yours,

Geo. W. Rache,
State Inspector Division of Oil
Department of Commerce

No. 16B

Report of W. A. Okey, Caldwell, O., Deputy Oil Inspector.

Date	For Whom Inspected	Where Inspected	No. of Car		Amt. Insp.		Test Bbls.	Insp. Fees	Where Manufactured	Car Fare
			Initial	Car No.	Gal.	Bbls.				
Oct. 7	Wilburing Oil Works	Bridgeport	B. & O. 99253		2860	57		\$1.71	E. Butler, Pa.	
							Car fare			
							Street Car Fare			\$ 5.40
							Dinner			.16
							Supper			.60
							Lodging			1.50
							Breakfast			.50
							Dinner			.60
							Dinner			.60
							Time required, 2 days			8.20
										\$17.56
Oct. 29	Standard Oil Co.	St. Clairsville, O.	UTLX 33812	10197	205			\$6.12	Wood River, Ill.	
							Car Fare			4.72
							Dinner			.75
							Supper			.60
							Lodging			1.50
							Breakfast			.50
							Time required, 1 1/2 da.			6.15
										\$14.22

Miles traveled 116

Date	For Whom Inspected	Where Inspected	No. of Car		Amt. Insp.		Test	Insp. Fees	Where Manufactured		Car Fare
			Initial	Car No.	Gal.	Bbls.			Wood River, Ill.	Wood River, Ill.	
Oct. 27	Standard Oil Co.	Waterford, O.	UTLX	37530	10178	204		\$6.12			
							Car Fare		4.12		
							Dinner		.50		
							Supper		.60		
							Lodging		1.50		
							Breakfast		.50		
							Time required, 1 1/2 da.		6.15		
							Miles traveled, 118				\$13.37
Oct. 11	Standard Oil Co.	Cambridge, O.	UTLX	76149	10049	201		\$6.03	Wood River, Ill.		
							Car Fare		1.64		
							Dinner		.75		
							Time required, 1 da.		4.10		
							Miles traveled, 46				\$6.49
Oct. 25	Standard Oil Co.	Flushing,	UTLX	37624	10184	204		\$6.12	Wood River, Ill.		
							Car Fare		7.56		
							Dinner		.60		
							Supper		.75		
							Lodging		1.50		
							Breakfast		.40		
							Dinner		.60		
							Time required, 2 days		8.20		
							Miles traveled, 193				\$19.61

EXHIBIT No. 17

Statement of Legitimate Expense of Inspection of Inter-State Shipments of Petroleum Products and Corresponding Deficit or Surplus.

Month	Inspector	Trip From --To	Car No.	Capacity	Itemized Expense of Trip			Total Cost	Fees	In-Relief	Surplus	Net
					Meals	R. R. Fare	Per Diem					
Sept.	Bowers	Columbus	SDRX 19807	8034 gal.			\$4.10	\$4.10	\$1.80		\$.70	
Sept.	Bowers	Columbus	SDRX 4874	8083 gal.					4.86		4.86	
Sept.	Bowers	Columbus	SDRX 12814	7992 gal.					4.80		4.80	
Sept.	Bowers	Columbus	SDRX 4854	8074 gal.					4.83		4.83	
Sept.	Bowers	Columbus	SDRX 6874	9079 gal.					5.46		5.46	
Sept.	Bowers	Columbus	SDRX 20873	8018 gal.					4.80		4.80	
Sept.	Bowers	Columbus	SDRX 13819	7975 gal.					4.77		4.77	
Sept.	Bowers	Columbus	SDRX 22849	8139 gal.					4.89		4.89	
Sept.	Bowers	Columbus	SDRX 10853	8028 gal.					4.83		4.83	
Sept.	Bowers	Columbus	SDRX 23825	8020 gal.					4.80		4.80	
Sept.	Hudson	Cleveland	SDRX 6849	8128 gal.			4.10	4.10	4.89		.79	
Sept.	Hudson	Cleveland	SDRX 15811	8054 gal.					4.83		4.83	
Sept.	Hudson	Cleveland	SDRX 9133	10189 gal.					6.12		6.12	
Sept.	Hudson	Cleveland	SDRX 17841	8085 gal.					4.86		4.86	
Sept.	Hudson	Cleveland	SDRX 19889	8038 gal.					4.83		4.83	
TOTALS										\$74.37	\$66.17	

TOTALS 123936 gal.

Taking a total of 123,936 gallons of gas line shipped into the state to such points as Columbus or Cleveland, the inspection of which involved little travel expense, and ignoring any such expense against the fees as meals, automobile mileage, etc., the surplus thus counted is \$66.17. Comparing this sum (which is too large as it is not a net surplus) and comparing it with the deficit on the same gallonage shipped into the state to such points as Canton, Wooster, Medina, Glenster, Van Wert, etc., the inspection of which involves travel and travel expense, we find that the deficit over and above the fees received for such inspections is \$79.35. The state obtains

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Itemized Expense of Trip																	
Month	Inspector	Trip From	To	Trip No.	Capacity	Rate Per Hr.	Mileage	% Per Month	Total Cost	Fares	Loss						
Sept.	Deput	Findlay	DeGraff	SDRX	4660	6100 gal.	85.32	4.10	89.42	83.66	\$5.76						
Sept.	Woods	Youngstown	Canton	SDRX	5657	6090 gal.	4.02	4.10	8.12	3.63	4.49						
Sept.	Roche	Steubenville	Dover	SDRX	5681	6090 gal.	5.48	4.10	8.58	3.63	5.95						
Sept.	Lambert	Ironton	Wellston	SDRX	9193	10104 gal.	4.44	4.10	8.54	6.06	2.48						
Sept.	Schooler	Gilsonburg	Mansfield	SDRX	7602	6093 gal.	4.58	4.10	8.68	3.63	5.05						
Sept.	Alley	Chillicothe	Asheville	SDRX	1685	6113 gal.	2.06	4.10	6.16	3.66	2.50						
Sept.	Depue	Findlay	Lima	SCFX	429	7960 gal.	2.30	4.10	6.40	5.77	.63						
Sept.	Lambert	Ironton	Jackson	SDRX	23844	8041 gal.	3.96	4.10	8.06	4.80	3.26						
Sept.	Roche	Steubenville	Freeport	SDRX	2860	8035 gal.	4.80	4.10	8.90	4.80	4.10						
Sept.	Lambert	Ironton	Gloucester	SDRX	18870	8102 gal.	14.42	4.10	18.52	4.80	13.72						
Sept.	Miller	Zanesville	Millersburg	SDRX	7893	8044 gal.	4.00	4.10	8.10	4.80	3.30						
Sept.	Wuichet	Dayton	Marysville	SDRX	5888	8038 gal.	4.14	4.10	8.24	4.80	3.44						
Sept.	Vena	Toledo	Pt. Clinton	SDRX	20803	8037 gal.	4.34	4.10	8.44	4.80	3.64						
Sept.	Couden	Morrow	Greenfield	SDRX	1615	6125 gal.	4.06	4.10	8.16	4.80	4.50						
Sept.	Woods	Youngstown	Medina	SDRX	8887	7985 gal.	6.42	4.10	10.52	4.77	5.75						
Sept.	Woods	Youngstown	Wooster	SDRX	5642	6141 gal.	6.42	4.10	10.52	3.66	6.86						
										\$69.70 \$153.94 \$74.59 \$79.35							
										123089 gal. \$84.24							

EXHIBIT I. No. 18 **Statement of Legitimate Expense of Inspection of Inter-State Shipments of Petroleum Products and Corresponding Deficit or Surplus**

Month	Inspector	Trip From--To	Car No.	Itemized Expense of Trip						Cost Total	Deficit	Surplus	Net
				Capacity	Fees	Fare	Meals	Per Diem	Wage				
Aug.	Cottingham	Eaton--Greenville	SDRX 4813	8122 gal.	\$4.86	\$3.00	\$.75	1 day	6¢				
Aug.	Miller	Zanesville--Millersburg	SDRX 4638	6143 gal.	3.69	4.00	1.50	1da	4.10	\$5.80	\$.94		
Aug.	Rose	Warren--Ashtabula	SDRX 3813	8264 gal.	4.95	3.22	.75	1da	2.05	9.60	5.91		
Aug.	Okey	Caldwell--Byesville	SDRX 2638	6059 gal.	3.63	1.28	.75	1da	2.05	6.02	1.07		
Aug.	Lambert	Ironton--Glouster	SDRX 19822	8063 gal.	4.83	14.42	1.50	1da	4.10	20.02	15.19		
Aug.	Woods	Youngstown--Wooster	SDRX 8111	10084 gal.	6.06	6.42	1.50	1da	4.10	12.02	5.96		
Aug.	Wuichet	Dayton--Springfield	SDRX 9864	8017 gal.	4.80	1.78	.75	1da	2.05	4.58			
Totals													
				54752 gal.	32.82	34.12	7.50	5da	41.15	62.12	29.52		29.30 deficit
Aug.	Hudson	Cleveland--	SDRX 8173	10087 gal.	\$6.06		.75	1da	4.10	4.85		1.21	
Aug.	Hudson	Cleveland--	SDRX 8196	10090 gal.	6.06							6.06	
Aug.	Rocke	Steubenville--	SDRX 11136	10145 gal.	6.09		.75	1da	4.10	4.85		6.12	
Aug.	Hudson	Cleveland--	SDRX 13160	10183 gal.	6.12							6.00	
Aug.	Hudson	Cleveland--	SDRX 8123	10005 gal.	6.00							6.12	
Aug.	Hudson	Cleveland--	SDRX 13185	10194 gal.	6.12		.75			4.10	4.85		
Aug.	Alley	Chillicothe--	SDRX 3586	6097 gal.	3.63						1.22		
Totals													
				96220 gal.	40.08		2.25		12.30	14.55	1.22	26.75	25.53 surplus

Comparing 7 local inspections with 7 inspections requiring travel expense, we find a net deficit of \$3.77. The deficit thus eats up the surplus. These cars were taken at random in the order which they were found in the files. No effort has been made to juggle the figures to make the deficit counteract the surplus. These are all inter-state shipments.

3.77 deficit

Exhibit No. 19.
Gasoline and Coal Oil Fires
From Ohio State Fire Marshal's Report
Calendar Year 1917.
All on Reported Fires.

1917	No.	Loss	Total	Grand Total
Gasoline explosions	153	\$128,620		
Gasoline stove explosions.....	17	12,076		
Gasoline torch	15	70,262		
Kerosene lamp explosions.....	41	18,718		
Kerosene lantern explosions....	6	2,315		
Kerosene stove explosions.....	59	40,597	\$272,716.00	
1918—Not carried in Annual Report Tables. Losses taken from Official Bulletin by months.				
January				
Gasoline torch	2	650		
Kerosene stove explosion.....	14	6,084		
February				
Gasoline explosion	10	17,799		
Kerosene stove explosion.....	2	875		
Kerosene lamp explosion.....	4	4,793		
March				
Gasoline explosion	2	15,250		
Gasoline stove explosion.....	2	600		
Gasoline torch	2	8		
Kerosene lamp explosion.....	3	890		
April				
Gasoline explosion	9	25,320		
Gasoline stove explosion.....	3	425		
Gasoline torch	2	15,052		
Kerosene lamp explosion.....	8	8,650		
Kerosene stove explosion.....	4	7,864		
May				
Gasoline explosion	8	59,040		
Gasoline stove explosion.....	2	70		
Kerosene stove explosion.....	2	3,190		
June				
Gasoline explosion	7	4,050		
Gasoline stove explosion.....	2	220		
Gasoline torch	5	2,505		
Kerosene lamp explosion.....	2	70		
Kerosene stove explosion.....	2	898		
July				
Gasoline explosion	7	12,680		
Kerosene lamp explosion.....	4	949		
Kerosene stove explosion.....	3	1,025		
August				
Gasoline explosion	12	2,800		
Kerosene lamp explosion.....	2	475		
Kerosene stove explosion.....	3	2,185		
September				
Gasoline explosion	4	19,450		
Gasoline stove explosion.....	2	3,625		
Kerosene lamp explosion.....	5	2,515		
Kerosene stove explosion.....	2	107		

Exhibit No. 19.

	No.	Loss	Total	Grand Total
October				
Gasoline torch	2	2,244		
Gasoline explosion	3	7,300		
Kerosene lantern explosion....	2	600		
Kerosene lamp explosion.....	2	887		
Kerosene stove explosion.....	3	377		
November				
Gasoline explosion	5	2,439		
Kerosene lamp explosion.....	3	3,450		
Kerosene stove explosion.....		28,750		
December				
Gasoline explosion	5	3,236		
Kerosene lamp explosion.....	3	2,160		
Kerosene stove explosion.....	2	55	\$271,612.00	
1919—From Annual Report State Fire Marshal, calendar year.				
Gasoline explosions	139	292,712		
Gasoline stove explosions.....	7	4,148		
Gasoline torch	44	108,738		
Kerosene lamp explosions.....	31	19,069		
Kerosene lantern explosions....	7	34,191		
Kerosene stove explosions.....	49	42,129	\$500,987.00	
1920—From tables of Annual Report (reported fires.)				
Gasoline explosions	165	328,931		
Gasoline stove explosions.....	11	13,274		
Gasoline torch	37	19,115	361,320.00	
1921—From Monthly Official Bulletin by months. (Reported fires)				
January				
Gasoline explosions	4	5,210		
Gasoline torch	3	340		
Kerosene stove explosion	3	370		
February				
Gasoline explosions	4	8,929		
Gasoline torch	2	2,432		
Kerosene lamp explosions.....	2	2,200		
Kerosene lantern explosions....	2	1,910		
Kerosene stove explosions.....	5	14,800		
March				
Gasoline explosions	6	3,000		
Kerosene lamp explosions.....	2	315		
Kerosene lantern explosions....	3	3,850		
Kerosene stove explosions.....	7	7,785		
April				
Gasoline explosions	15	15,697		
Gasoline torch	5	450		
Kerosene stove	5	1,715		
May				
Gasoline explosions	16	80,891		
Kerosene stove explosions.....	6	3,340		
Kerosene lamp explosions.....	2	1,030		
June				
Gasoline explosions	10	5,650		
Gasoline torch	4	125		
Kerosene stove explosions.....	10	11,078		
Kerosene lamp explosions.....	1	300		
July				
Gasoline explosions	10	4,025		
Gasoline back-fire	2	4,005		

Exhibit No. 19.

	No.	Loss	Total	Grand Total
Gasoline torch	6	1,132		
Kerosene stove explosions.....	4	3,720		
Kerosene lamp explosions.....	1	76		
August				
Gasoline explosions	17	21,822		
Gasoline torch	3	460		
Kerosene lamp explosions.....	1	7,016		
Kerosene stove explosions.....	10	42,600	\$256,273.00	\$1,662,908.00

Gasoline and Oil Casualties

Ohio—1919

By H. A. Dykeman, State Fire Marshal

No records separating the causes of individual deaths are available. The Bureau of Vital Statistics does not have such a record. The Fire Marshal's office began in January, 1919, to tabulate the deaths due to all fire causes, classing them males and females and subdividing them according to age; i. e., babes and children, youths and middle aged, and aged persons, simply to warn people against fire dangers.

The causes were lumped.

The following is the record by months in 1919 on the above plan, simply giving the cause and not the numbers. (From the Official Bulletin.)

January: Among the causes of deaths were, pulling oil lamp from table, and using oil to kindle fire.

February: No causes mentioned.

March: Gasoline and coal oil used as fire kindlers killed 2 and injured 4. An exploding coal oil lantern injured one.

April: Major cause of deaths and injuries—coal oil and gasoline. The explosion of an incubator lamp (coal oil) injured one person.

May: No record of any deaths by oil.

June: Deaths were noted from gasoline explosions, and an oil lamp explosion.

July: Among the causes of death was, gasoline being mistaken for coal oil.

August: One child burned to death by gasoline; one by coal oil. Causes of some injuries—throwing crude oil on the fire, carrying a lantern near a wrecked gasoline car, and filling a gasoline stove while it was lighted.

September: Some causes of deaths and injuries; oil stove exploded, filling gasoline stove while lighted; cleaning gloves with gasoline.

Exhibit 17.

October: Bulletin for this month has no record of any oil deaths.

November: Same.

December: Same.

Note: This does not mean that there were no deaths from oil and gasoline.

1920—Fire Casualties (From Official Bulletin).

January: Coal oil, 1; gasoline, 1.

February: Coal oil, 2; gasoline, 1.

March: Coal oil, 1; gasoline, 1.

April: Coal oil, 1; gasoline, 2.

May: Coal oil, 2; gasoline, 4.

June: Kerosene and oils, 7; benzol, 3.

July: Coal oil, 2; gasoline, 2.

August: Coal oil, 2; gasoline, 8 dead (10 injured).

September: Gasoline, 1.

October: Gasoline, 1.

November: Coal oil, 3; gasoline, 1.

December: Causes not separated.

Ohio Oil and Gas Deaths—1921.

From newspaper daily clippings.

1921	Deaths by Kerosene	Deaths by Gasoline
January	6	2
February	0	1
March	3	0
April	2	1
May	2	0
June	1	1
July	1	2
August	0	2
September	5	1
October	5	0
Total, 10 months.....	25	10

EXHIBIT 17.

East Chicago, Ind., 9-14-1921.

Dear Sir:—

On Sept. 14, 1921, SDRX Car No. 19807 was shipped from East Chicago, Ind., consigned to American Oil Prod.

Exhibit 17.

Co., at Columbus, Ohio. This car contained 8034 gallons of Gasoline.

This for your advance information.

Sinclair Refining Company.

Per G. I. Olsen.

50)8034(160 Bbls

50 3

303 \$4.80 Fees

300

34

50

East Chicago, Ind., 9-14-21.

Dear Sir:—

On September 12, 1921, SDRX Car No. 19889 was shipped from East Chicago, Indiana, consigned to Kindred Garage at Steubenville, Ohio. This car contained 8038 gallons of Gasoline.

This for your advance information.

Sinclair Refining Company.

Per G. I. Olsen.

50)8038(160+ 161 Bbls.

50 3

303 \$4.83 Fees

300

38

50

Cushing, Okla., Sep. 12, 1921.

Dear Sir:—

On Sept. 9th, 1921, SDRX Car No. 17841 was shipped from Cushing, Okla., consigned to Columbia Refg. Co. at Cleveland, Ohio. This car contained 8085 gallons of gasoline.

This for your advance information.

Sinclair Refining Company.

Per R. G. Ross.

Exhibit 17.

50)8085(162 Bbls.

50	3
<hr/>	

308 \$4.86 Fees

300
<hr/>

85

50

<hr/>
35
<hr/>

50

East Chicago, Ind., 9-26-1921.

Dear Sir:—

On Sept. 26, 1921, SDRX Car No. 9133 was shipped from East Chicago, Ind., consigned to Sinclair Refining Company, at Cleveland, Ohio. This car contained 10189 gallons of Gasoline.

This for your advance information.

Sinclair Refining Company.

Per Robert E. Klinge.

50) 10189 (204 Bbls.

100	3
<hr/>	

189 \$6.12 Fees

200
<hr/>

9-23-21.

Dear Sir:—

On 9-23-21, SDRX Car No. 15811 was shipped from East Chicago, Indiana, consigned to Sinclair Refining Co. at Cleveland, Ohio. This car contained 8054 gallons of Gasoline.

This for your advance information.

Sinclair Refining Company.

Per Robert E. Klinge.

50)8054(161 Bbls.

50	3
<hr/>	

305 \$4.83 Fees

Exhibit 17.

300

54

50

9-23-21.

Dear Sir:—

On 9-23-21, SDRX Car No. 6849 was shipped from East Chicago, Indiana, consigned to Sinclair Refining Co. at Cleveland, Ohio. This car contained 8128 gallons of gasoline.

This for your advance information.

Sinclair Refining Company.

Per Robt. E. Klinge.

50)8128(163 Bbls.

50

3

312 \$4.89 Fees

300

128

150

East Chicago, Ind., 9-29-1921.

Dear Sir:—

On Sept. 29, 1921, SDRX Car No. 23825 was shipped from East Chicago, Ind., consigned to American Oil Prod. Co., at Columbus, Ohio. This car contained 8020 gallons of Gasoline.

This for your advance information.

Sinclair Refining Company.

Per Robt. E. Klinge.

50)8020(160 Bbls.

50

3

302 \$4.80

300

20

50

Exhibit 17.

East Chicago, Ind., 9-28-21.

Dear Sir:—

On Sept. 28, 1921, SDRX Car No. 10853 was shipped from East Chicago, Ind., consigned to American Oil Prod. Co., at Columbus, Ohio. This car contained 8028 gallons of Gasoline.

This for your advance information.

Sinclair Refining Company.

Per Robt. E. Klinge.

50)8028(161 Bbls.

50	3
—	—

302 \$4.83 Fees

300

—
28
—
50

East Chicago, Ind., 9-23-1921.

Dear Sir:—

On Sept. 23, 1921, SDRX Car No. 22849 was shipped from East Chicago, Ind., consigned to American Oil Prod. Co., at Columbus, Ohio. This car contained 8139 gallons of Gasoline.

This for your advance information.

Sinclair Refining Company.

Per Robt. E. Klinge.

50)8139(163 Bbls.

50	3
—	—

313 \$4.89 Fees

300

—
139
—
150

East Chicago, Ind., 9-22-1921.

Dear Sir:—

On Sept. 22, 1921, SDRX Car No. 13819 was shipped from East Chicago, Ind., consigned to American Oil Prod. Co., at Columbus, Ohio. This car contained 7975 gallons of Gasoline.

Exhibit 17.

This for your advance information.

Sinclair Refining Company.
Per Robt. E. Klinge.

50)7975(159 Bbls.
50	3
—	—
297	4.77
250	
—	
475	
450	
—	
25	
—	

East Chicago, Ind., 9-22-21.

Dear Sir:—

On Sept. 22, 1921, SDRX Car No. 20873 was shipped from East Chicago, Ind., consigned to American Oil Prod. Co., at Columbus, Ohio. This car contained 8018 gallons of Gasoline.

This for your advance information.

Sinclair Refining Company.
Per Robt. E. Klinge.

50)8018(160 Bbls.
50	3
—	—
301	\$4.80 Fees
300	
—	
18	
—	
50	

East Chicago, Ind., 9-24-21.

Dear Sir:—

On Sept. 24, 1921, SDRX Car No. 6874 was shipped from East Chicago, Indiana, consigned to American Oil Prod. Co., at Columbus, Ohio. This car contained 9079 gallons of Gasoline.

This for your advance information.

Sinclair Refining Company.
Per Robt. E. Klinge.

Exhibit 17.

50)9079(182 Bbls.

50	3
<hr/>	

407	\$5.46 Fees
400	
<hr/>	

79

50

29

East Chicago, Ind., 9-24-21.

Dear Sir:—

On September 24, 1921, SDRX Car No. 4854 was shipped from East Chicago, Indiana, consigned to American Oil Product Company, at Columbus, Ohio. This car contained 8074 gallons of Gasoline.

This for your advance information.

Sinclair Refining Company.

Per Robt. E. Klinge.

50)8074(161 Bbls.

50	3
<hr/>	

307	\$4.83 Fees
300	
<hr/>	

74

50

24

East Chicago, Ind., 9-12-21.

Dear Sir:—

On Sept. 12, 1921, SDRX Car No. 4874 was shipped from East Chicago, Ind., consigned to American Oil Prod. Co., at Columbus, Ohio. This car contained 8083 gallons of Gasoline.

This for your advance information.

Sinclair Refining Company.

Per G. I. Olsen.

50)8083(162 Bbls.

50	3
<hr/>	

308	\$4.86 Fees
-----	-------------

Exhibit 17-A.

300

—
83

East Chicago, Ind., 9-23-1921.

Dear Sir:—

On Sept. 23, 1921, SDRX Car No. 12814 was shipped from East Chicago, Ind., consigned to American Oil Prod. Co., at Columbus, Ohio. This car contained 7992 gallons of Gasoline.

This for your advance information.

Sinclair Refining Company.
Per Robt. E. Klinge.

50)7992(160 Bbls.

50 3

—
299 \$4.80 Fees

250

—
492

450

—
42—
50**EXHIBIT 17A.**

East Chicago, Ind., 9-24-21.

Dear Sir:—

On Sept. 24, 1921, SDRX Car No. 4660 was shipped from East Chicago, Indiana, consigned to DeGraff Oil Prod. Co., at DeGraff, Ohio. This car contained 6100 gallons of Gasoline.

This for your advance information.

Sinclair Refining Company.
Per Robt. E. Klinge.

50 6100

—
122

03

—
3.66

Findlay to DeGraffe 2.66

Return 2.66

Time 4.10

—
\$9.42

3.60

—
Deficit \$5.76

East Chicago, Ind., 9-6-1921.

Dear Sir:—

On Sept. 6, 1921, SDRX Car No. 5657 was shipped from East Chicago, Ind., consigned to Canfield Oil Co., at Canton, Ohio. This car contained 6090 gallons of Gasoline.

This for your advance information.

Sinclair Refining Company.

Per G. I. Olsen.

50/6090 gal.	Youngstown to Canton	2.01
121+ bbl.	Return	2.01
.03	Time	4.10
		<hr/>
\$3.63 fees	Cost	\$8.12
	Fees	3.63
		<hr/>

Deficit \$4.49

East Chicago, Ind., 9-6-21.

Dear Sir:—

On Sept. 6, 1921, SDRX Car No. 5681 was shipped from East Chicago, Ind., consigned to Canfield Oil Co., Tuscarawas County, at Dover, Ohio. This car contained 6090 gallons of Gasoline.

This for your advance information.

Sinclair Refining Company.

Per G. I. Olsen.

50/6090	Steubenville to Dover	2.74
121	Return	2.74
.03	Time	4.10
		<hr/>
\$3.63		\$9.58
	Fees	3.63
		<hr/>

Deficit \$5.95

East Chicago, Ind., 9-6-1921.

Dear Sir:—

On Sept. 6, 1921, SDRX Car No. 9193 was shipped from East Chicago, Ind., consigned to Jackson County Oil Co., at Wellston, Ohio. This car contained 10104 gallons of Gasoline.

This for your advance information.

Sinclair Refining Company.

Per G. I. Olsen.

50/10104	Iron-ton to Wellston	2.22
----------	----------------------	------

Exhibit 17-A.

<u>202</u>	Return	2.22
.03	Time	4.10
		<u>\$8.54</u>
\$6.06		6.06

Deficit \$2.48

East Chicago, Ind., 9-6-21.

Dear Sir:—

On Sept. 6, 1921, SDRX Car No. 7602 was shipped from East Chicago, Ind., consigned to Canfield Oil Company, at Mansfield, Ohio. This car contained 6093 gallons of Gasoline.

This for your advance information.

Sinclair Refining Company.

Per G. I. Olsen.

6093	Gibsonburg to Mansfield	2.29
	Return	2.29
<u>121+ bbl.</u>	Time	4.10
.03		<u>Cost \$8.68</u>
\$3.63 fees		3.63

Deficit \$5.05

Cushing, Oklahoma, Sep. 9, 1921.

Dear Sir:—

On Sep. 9, 1921, SDRX Car No. 1685 was shipped from Cushing, Oklahoma, consigned to T. A. Boor, at Ashville, Ohio. This car contained 6113 gallons of Gasoline.

This for your advance information.

Sinclair Refining Company.

Per R. G. Ross.

6113	Chillicothe to Ashville	1.03
	Return	1.03
<u>122+</u>	Time	4.10
.03		<u>\$6.16</u>
\$3.66		3.66

Deficit \$2.50

Exhibit 17-A.

Sept. 2, 1921.

Dear Sir:—

On Aug. 30, 1921, SOFX Car No. 429 was shipped from Wichita, Kas., consigned to Shattell Petroleum Co., at Lima, O. This car contained 7960 gallons of Gasoline.

This for your advance information.

Sinclair Refining Company.

50 7960

159

.03

\$5.77

Per H. H. P.
Findlay to Lima 1.15
Return 1.15
Time 4.10

\$6.40

Fees 5.77

Deficit .63

East Chicago, Ind., 9-16-1921.

Dear Sir:—

On Sept. 16, 1921, SDRX Car No. 23844 was shipped from East Chicago, Ind., consigned to Order Sinclair, Ntly C. A. Scott, at Jackson, Ohio. This car contained 8041 gallons of Gasoline.

This for your advance information.

Sinclair Refining Company.

Fees

50 8041

160

.03

\$4.80

Per G. I. Olsen.
Ironton to Jackson 1.98
Return 1.98
Time 4.10

\$8.06

4.80

Deficit \$3.26

East Chicago, Ind., 9-29-21.

Dear Sir:—

On Sept. 29, 1921, SDRX Car No. 2860 was shipped from East Chicago, Ind., consigned to L. D. Latham, at Freeport, Ohio. This car contained 8035 gallons of Gasoline.

This for your advance information.

Sinclair Refining Company.

Per Robt. E. Klinge.

Exhibit 17-A.

50/8035	Stebenville to Freeport	2.40
	Return	2.40
160 bbl.	Time	4.10
.03		
		<hr/>
		\$8.90
\$4.80		4.80
		<hr/>

Deficit \$4.10

East Chicago, Ind., 9-22-21.

Dear Sir:—

On Sept. 22, 1921, SDRX Car No. 18870 was shipped from East Chicago, Ind., consigned to Order Sinclair, Ntly C. A. Beal, at Glouster, Ohio. This car contained 8012 gallons of Gasoline.

This for your advance information.

Sinclair Refining Company.

Per Robt. E. Klinge.

50/8012	Ironton to Glouster	7.21
	Return	7.21
160	Time	4.10
.03		
		<hr/>
		\$18.52
\$4.80		4.80
		<hr/>

Deficit \$13.72

East Chicago, Ind., 9-29-1921.

Dear Sir:—

On Sept. 29, 1921, SDRX Car No. 7893 was shipped from East Chicago, Ind., consigned to Sinclair Refining Company, at Millersburg, Ohio. This car contained 8044 gallons of Gasoline.

This for your advance information.

Sinclair Refining Company.

Per Robt. E. Klinge.

50/8044	Zanesville to Millersburg	2.00
	Return	2.00
160 +	Time	4.10
.03		
		<hr/>
	Cost	\$8.10
\$4.80	Fees	4.80
		<hr/>
	Deficit	\$3.30

Exhibit 17-A.

Dear Sir:—

Sept. 16, 1921.

On Sept. 12, 1921, SDRX Car No. 5888 was shipped from Blackwell, Okla., consigned to Penn Oil Co., at Marysville, O. This car contained 8038 gallons of gasoline.

This for your advance information.

Sinclair Refining Company.

Per H. H. D.

50/8038

Dayton to Marysville 2.07

160

Return 2.07

.03

Time 4.10

\$4.80

\$8.24

4.80

Deficit \$3.44

East Chicago, Ind., 9-16-1921.

Dear Sir:—

On Sept. 16, 1921, SDRX Car No. 20803 was shipped from East Chicago, Ind., consigned to Harry Stenson, at Port Clinton, Ohio. This car contained 8037 gallons of Gasoline.

This for your advance information.

Sinclair Refining Company.

Per G. I. Olsen.

50/8037

Toledo to Pt. Clinton 2.17

160+ bbl.

Return 2.17

.03

Time 4.10

\$4.80 fees

\$8.44

4.80

Deficit \$3.64

Cushing, Okla., Sep. 20, 1921.

Dear Sir:—

On Sep. 19, 1921, SDRX Car No. 1615 was shipped from Cushing, Okla., consigned to Tri-County Motor Company, at Greenfield, Ohio. This car contained 6125 gallons of gasoline.

This for your advance information.

Sinclair Refining Company.

Per R. G. Ross.

Exhibit 17-A.

50 6125	Morrow to Greenfield	2.03
<u> </u>	Return	2.03
122+ bbls.	Inspector	4.10
.03		<u> </u>
		\$8.16
\$3.66 fees	Fees	3.66
		<u> </u>
	Deficit	\$4.50
	East Chicago, Ind., 9-9-21.	

Dear Sir:—

On Sept. 9, 1921, SDRX Car No. 8887 was shipped from East Chicago, Ind., consigned to Free Oil Company, at Medina, Ohio. This car contained 7958 gallons of gasoline.

This for your advance information.

Sinclair Refining Company.

Per G. I. Olsen.

50 7958 gal.	Youngstown to Medina	3.21
<u> </u>	Return	3.21
159+ bbl.		4.10
.03		<u> </u>
	Cost	10.52
4.77 fees	Fees	4.77
		<u> </u>
	Deficit	\$5.75

Cushing, Okla., Sep. 26, 1921.

Dear Sir:—

On Sep. 26, 1921, SDRX Car No. 5642 was shipped from Cushing, Okla., consigned to Sinclair Refining Co., at Wooster, Ohio. This car contained 6141 gallons of kerosene.

This for your advance information.

Sinclair Refining Company.

Per R. G. Ross.

	Fees	
50 6141	Youngstown to Wooster	3.21
<u> </u>	Return	3.21
122	Inspector's time	4.10
.03		<u> </u>
	Est. expense	\$10.52
\$3.66	Fees	3.66
		<u> </u>
	Deficit	\$6.86

Exhibit 17-A.

East Chicago, Ind., 9-29-21.

Dear Sir:—

On Sept. 29, 1921, SDRX Car No. 2622 was shipped from East Chicago, Ind., consigned to Sinclair Refining Company, at Van Wert, Ohio. This car contained 6108 gallons of gasoline.

This for your advance information.

Sinclair Refining Company.

Per Robt. E. Klinge.

50) 6108 gal.

122 bbl.

.03

\$3.66 fees

Ottawa to Van Wert \$1.74

Return 1.74

Time 4.10

\$7.58

3.66

\$3.92

Cushing, Okla., Sep. 12, 1921.

Dear Sir:—

On Sept. 10th, 1921, SDRX Car No. 13160 was shipped from Cushing, Okla., consigned to Columbia Refg. Co., at Cleveland, Ohio. This car contained 10183 gallons of gasoline.

This for your advance information.

Sinclair Refining Company.

Per R. G. Ross.

50) 10183 (204 Bbbls.

100 3

183 \$6.12 Fees

150

33

East Chicago, Ind., 8-15-21.

Dear Sir:—

On Aug. 15, 1921, SDRX Car No. 9864 was shipped from East Chicago, Indiana, consigned to United Oil Prod. Co. at Springfield, Ohio. This car contained 8017 gallons of Gasoline.

This for your advance information.

Sinclair Refining Company.

Per G. I. Olsen.

Exhibit 17-A.

50 8017	Cost Insp.
160 Bbls.	$\frac{1}{2}$ da. 2.05
3	Fare 1.78
	<hr/>
\$4.80 Fees	3.83
4.80	.75
4.58	<hr/>
	4.58
<hr/>	
.22	

East Chicago, Ind., 8-15-21.

Dear Sir:—

On Aug. 15, 1921, SDRX Car No. 8111 was shipped from East Chicago, Indiana, consigned to Sinclair Refining Co., at Wooster, Ohio. This car contained 10084 gallons of Gasoline.

This for your advance information.

Sinclair Refining Company.

Per G. I. Olsen.

50 10084	Cost Insp.
202 Bbls.	1 da. 4.10
3	Fare 6.42
	<hr/>
6.06 Fees	\$10.52
	1.50
	<hr/>
	\$12.02
	6.06
	<hr/>

Def. \$5.96

East Chicago, Ind., 8-15-21.

Dear Sir:—

On Aug. 12th, 1921, SDRX Car No. 19822 was shipped from East Chicago, Ind., consigned to C. A. Beal, at Gloucester, Ohio. This car contained 8063 gallons of gasoline.

This for your advance information.

Sinclair Refining Company.

Per G. I. Olsen.

Exhibit 17-A.

50 8063

161 Bbls.

3

4.83 Fees

Cost Insp.	
1 da.	4.10
Fare	14.42

Cost	18.52
Meals	1.50

\$20.02

4.83

Def. \$15.19

East Chicago, Ind., 8-12-21.

Dear Sir:—

On August 12, 1921, SDRX Car No. 2638 was shipped from East Chicago, Ind., consigned to R. Huttens Garage, at Byersville, Ohio. This car contained 6059 gallons of Gasoline.

This for your advance information.

Sinclair Refining Company.

Per G. I. Olsen.

50 6059

121 Bbls.

3

3.63 Fees

Cost Insp.	
1 da.	2.05
Fare	1.28

3.33

75

Cost	4.08
	3.63

Def. .45

East Chicago, Ind., 8-15-21.

Dear Sir:—

On August 15, 1921, SDRX Car No. 3813 was shipped from East Chicago, Indiana, consigned to Sinclair Refining Co., at Ashtabula, Ohio. This car contained 8264 gallons of Gasoline.

This for your advance information.

Sinclair Refining Company.

Per G. I. Olsen.

Exhibit 17-A.

508264	Cost Inspn
<u> </u>	$\frac{1}{2}$ da. 2.05
165 Bbls.	Fare 3.22
3	<u> </u>
<u> </u>	5.27
\$4.95 Fees	Meal .75
	<u> </u>
	6.02
	Fees 4.95
	<u> </u>
	Def. 1.07

East Chicago, Ind., 8-3-1921.

Dear Sir:—

On August 3, 1921, SDRX Car No. 4813 was shipped from East Chicago, Ind., consigned to White Star Oil Co., at Greenyale, Ohio. This car contained 8122 gallons of gasoline.

This for your advance information.

Sinclair Refining Company.

Per G. I. Olsen.

508122	Cost Inspn.
<u> </u>	$\frac{1}{2}$ da. 2.05
162	Fare 3.00
3	<u> </u>
<u> </u>	5.05
\$4.86	.75
5.05	<u> </u>
<u> </u>	5.80
.19 Deficit	4.86
	<u> </u>
	.94

East Chicago, Ind., 8-11-21.

Dear Sir:—

On August 11, 1921, SDRX Car No. 4638 was shipped from East Chicago, Indiana, consigned to Sinclair Refining Co., at Millersburg, Ohio. This car contained 6143 gallons of Gasoline.

This for your advance information.

Sinclair Refining Company.

Per G. I. Olsen.

Exhibit 17-A.

50 6143

123 Bbls.

3

\$3.69 Fees

Cost Inspn

1 da. 4.10

Fare 4.00

8.10

Meals 1.50

\$9.60

Fees 3.69

Deficit \$5.91

East Chicago, Ind., 8-5-21.

Dear Sir:—

On Sept. 5, 1921, SDRX Car No. 3686 was shipped from East Chicago, Ind., consigned to H. S. Kay, at Chillicothe, Ohio. This car contained 6097 gallons of gasoline.

This for your advance information.

Sinclair Refining Company.

Per G. I. Olsen.

50 6097

121+

.03

\$3.63 Fees

Time 4.10

Meal .53

\$4.85

3.63

Deficit \$1.22

East Chicago, Ind., 9-28-1921.

Dear Sir:—

On Sept. 28, 1921, SDRX Car No. 13185 was shipped from East Chicago, Ind., consigned to Sinclair Refining Company, at Cleveland, Ohio. This car contained 10194 gallons of Gasoline.

This for your advance information.

Sinclair Refining Company.

Per Robt. E. Klinge.

50 10194 (204 Bbls.

100

3

194

6.12

200

Exhibit 17-A.

East Chicago, Ind., 9-6-21.

Dear Sir:—

On Sept. 6, 1921, SDRX Car No. 8123 was shipped from East Chicago, Ind., consigned to Cleveland Refining Company, at Cleveland, Ohio. This car contained 10005 gallons of Gasoline.

This for your advance information.

Sinclair Refining Company.

Per G. I. Olsen.

50100050	200 Bbls.
100	3

05 \$6.00 Fees

East Chicago, Ind., 9-27-1921.

Dear Sir:—

On Sept. 27, 1921, SDRX Car No. 11136 was shipped from East Chicago, Ind., consigned to Kinkaid Garage, at Steubenville, Ohio. This car contained 10145 gallons of Gasoline.

This for your advance information.

Sinclair Refining Company.

Per Robt. E. Klinge.

50101450	203 Bbls.
100	3

145 \$6.09 Fees

East Chicago, Ind., 9-21-21.

Dear Sir:—

On Sept. 21, 1921, SDRX Car No. 8196 was shipped from East Chicago, Ind., consigned to Sinclair Refining Company, at Toledo, Ohio. This car contained 10090 gallons of Gasoline.

This for your advance information.

Sinclair Refining Company.

Per Robt. E. Klinge.

50100900	202 Bbls.
100	3

90 \$6.06 Fees

East Chicago, Ind., 9-26-21.

On Sept. 26, 1921, SDRX Car No. 8173 was shipped from East Chicago, Ind., consigned to Sinclair Refining

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Company, at Cleveland, Ohio. This car contained 10087 gallons of Gasoline.

This for your advance information.

Sinclair Refining Company,

Per Robt. E. Klinge.

50) 10087 (202 Bbls.

100 3

87 \$6.06 Fees

MEMORANDUM OPINION—Filed December 21, 1921.

Before Donahue, Circuit Judge, Sater and Peck, District Judges.

Per Curiam:

The plaintiff, an Ohio corporation, assails on various grounds the constitutionality of the act passed by the General Assembly of Ohio May 19, 1915, entitled: "An Act to provide for the inspection of petroleum, illuminating oils, gasoline, naphtha, and the repeal of sections 844 to 868, inclusive, of the General Code," (Ohio Laws, Vol. 105, p. 309). The sections of the act are now known as sections 844-868, both inclusive, of such code. Invoking proceedings under Sec. 266 of the Judicial Code, the plaintiff seeks a temporary injunction against the defendant, as an individual and as Director of the State Department of Commerce, to prevent him from enforcing such act—the defendant as such Director having been vested by the act of April 26, 1921, with all the powers and duties conferred on the State Inspector of Oils by the act of 1915 and intending to enforce its provisions. For a considerable time past the plaintiff has been and is still engaged at East Cleveland, Ohio, in the sale and distribution of kerosene, petroleum and petroleum products, and has invested its capital in storage tanks, building, side tracks, machinery and other equipment necessary for and used in receiving, handling and delivering such kerosene, oil and petroleum products, of all which kinds of goods it has in storage large quantities. It buys in other states, ships into Ohio and receives at its place of business large quantities of such articles in storage tanks, barrels, cans and packages, and has contracts for such articles which it is bound to consummate

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and which it cannot perform without great loss, except through its established business. It also employs a large number of persons to sell and deliver its goods to the public. By the terms of the statute, oil intended for sale for illuminating purposes within the state must be inspected in Ohio. When consigned to a distributing station in tank cars it must be inspected at the refinery where manufactured, if located in the state, or at the distributing station to which it is consigned, at the discretion and direction of the State Inspector. Sec. 860. All mineral or petroleum oil and any fluid or substance, the product of petroleum, or into which petroleum or a product of petroleum enters or is a constituent element, whether manufactured within the state or not, and all gasoline, petroleum-ether, or similar or like substances, under whatever name held, whether manufactured within the state or not, having a lower flash test than provided by the Act for illuminating oils, shall be inspected before being offered for sale to a consumer for use in the state. Secs. 854, 865. Provision is made for a state oil inspector and deputy inspectors (a number of whom is required) and for payment of their prescribed salaries and their necessary traveling and other expenses and also for the payment of the salaries of stenographers and clerks, from the state treasury. Secs. 848, 849. The statute requires that each owner of the several kinds of goods required to be inspected shall pay to the State Inspector or his deputy for such inspection for a single barrel, package or cask, 5 cents; when the quantity inspected does not exceed ten barrels of 50 gallons each in the aggregate, for each barrel, 15 cents; when the quantity inspected does not exceed 50 barrels of 50 gallons each in the aggregate, for each barrel, 10 cents; when the quantity inspected exceeds 50 barrels of 50 gallons each in the aggregate, for each barrel, three cents. All fees are payable on demand of the State Inspector and in case of default beyond the tenth day of the end of the month in which such inspection is made, the fees are made a lien on the article inspected. Sec. 850. The State Inspector is required to keep a record of inspections, showing the date of inspection, number of barrels inspected, and the name of the person for whom inspection is made. A like record must also be

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made by each deputy inspector regarding his activities. All fees received are paid into the state treasury to the credit of the oil inspection fund. Sees. 851, 852, 853. If any manufacturer, vender or dealer shall sell or offer for sale any oil, fluid or substance marked "Rejected for illuminating purposes," or any gasoline, petroleum-ether, or similar or like substances which, after inspection has been marked "dangerous," he shall be fined not to exceed one thousand dollars or be imprisoned in the county jail not to exceed twenty days, or both. Sees. 859, 865. Any person who transfers the contents of a tank car, which have been rejected as the result of an examination, to a storage or receiving tank from which illuminating oil is distributed to consumers or dealers within the state, shall be subject to the penalty above stated (Sec. 861); and any driver of a wagon from which oil intended for consumption for illuminating purposes within the state is delivered to consumers or dealers and which does not bear a certificate such as covers the contents of the last tank car emptied into the storage or receiving tank from which the wagon was filled, shall be fined ten dollars for each day of his violation of the law. The inspection fees collected, beginning with July 1, 1915, and ending on June 30, 1920, were \$639,057.47. The disbursements were \$321,188.68. In addition to the fees thus actually received, there was a considerable sum of outstanding uncollected accounts at the close of the period named. Exclusive of such accounts the fees collected in such five years exceeded the cost of inspection by \$317,868.79. On account of the increased consumption of the articles inspected, the excess of receipts over the cost of inspection in each of the years within the above named period exceeded that of the preceding year, the excess for the year ending June 30, 1916, being \$34,219.23, and thereafter the excess annually increased until for the year ending June 30, 1920, it was \$104,690.23. On account of a reduction in the number of deputy oil inspectors and change in the mode of inspection, the inspection fees and the cost of inspection for the year ending June 30, 1921, cannot be stated, but, in view of the increased use of the articles subject to inspection, it is thought the inspection fees for the year then ending will

Memorandum Opinion.

not be less than those of the preceding year, while the cost of inspection will be less on account of the reduction in the number of inspectors.

The plaintiff contends that the inspection fees charged are excessive, that they interfere with interstate commerce and are an unlawful impost duty upon goods shipped into Ohio from other states, and that the statute is therefore violative of Article I, sections 8 and 10, of the Federal constitution.

The enactment of proper oil inspection laws is a valid exercise of the police power. *Castle v. Mason*, 91 O. S., 296; *Red "C" Oil Mfg. Co. v. Board of Agriculture*, 232 U. S., 380, 392. The State was without power to regulate interstate commerce, but under the Federal constitution it could collect the necessary expense of its inspection laws, with the result that interstate commerce to that extent would be lawfully burdened. The power to fix fees to cover such expenses rested primarily with the General Assembly, which in its discretion was required to determine the amount to be charged, and, on account of the fluctuation in trade and the inability to determine the sum that would be realized in the way of fees under a given law, it was not required to determine with exact nicety the difference between cost and collection. A surplus collected in any given year above inspection expenses would not necessarily indicate an invalid law, for the reason that such excess might be required to balance the deficit of some other year. In the instant case, however, leaving out of consideration the outstanding unpaid fees, the collections, when least, were sixty-three per cent. greater than the inspection costs. This percentage uniformly increased for the years ending June 30, 1919, and June 30, 1920, respectively, the collections were more than twice the cost of inspection. The excess over inspections has been uniformly great and has so advanced from year to year that the fees provided by the statute must be held to be unreasonable and disproportionate to the service rendered, and the Act must be declared unconstitutional, as imposing a direct and unlawful burden on interstate commerce, unless interstate shipments under the provisions of the Act are separable from intrastate shipments and the fees collected for the in-

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spection of the former are equal or substantially equal to the cost of inspecting shipments of that character. The defendant's position is that the two classes of shipment are thus separable and the interstate shipments have in fact been inspected at a loss to the state.

It is significant that the state has not at any time in the enforcement of the law kept or endeavored to keep a separate record of interstate and intrastate shipments or of the sums realized from their inspection, although a belated and imperfect effort was made at the hearing to show that such shipments and sums are separable. The construction thus placed upon the law by the State's executive officers is entitled to great respect. *Hahn v. United States*, 107 U. S., 402, 406; *Smythe v. Fisk*, 90 U. S., 374, 404. In the *Light of Castle v. Mason*, 91 O. S., 296, and *Foot v. Maryland*, 232 U. S., 494, as well as of the express provisions of the Act, such construction is correct, for the reason that the statute does not contemplate a separation of interstate and intrastate shipments and contains no provision for a separate record or accounting for the same, or from whom and where purchased or from whence shipped, or any suggestion of a classification with reference to the character of the shipments. It applies generally to any and all kerosene, petroleum or petroleum products, whether manufactured in this state or not, and whether shipped wholly within the state or from other states into this. Shipments of both classes, without discrimination or intent of separation, are subjected to the provisions of the act, are classified collectively with reference to the quantity only of fluids inspected, are charged with the same fees, and the commingled receipts arising from their inspection are required to be paid into the State Treasury. The act, except as to the amount of fees charged for inspection, is in its essential details and even in nearly all of the language employed, a re-enactment of the law declared unconstitutional in *Castle v. Mason*, 91 O. S., 296, in which case it was found that such earlier act does not materially differ from the law declared void in *Foot v. Maryland*, and that considered in *Red "C" Oil Mfg. Co. v. Board of Agriculture*, 222 U. S., 380. The General Assembly, with at least constructive knowledge that, under

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the operations of the law, the excess of receipts over expenses was large and annually mounting, permitted the inspection charges to remain undisturbed, and in this respect its conduct has differed from the conduct of the Minnesota legislature with reference to the act considered in *Pure Oil Co. v. Minnesota*, 248 U. S., 158. Where goods, such as the plaintiff deals in, are transported in original packages from other states into this, interstate commerce in such goods is not completely terminated, and they are protected by the commerce clause of the constitution against excessive inspection fees, until after their sale at the point of destination within this state. *Standard Oil Co. v. Graves*, 249 U. S., 389, approving the conclusions reached in *Castle v. Morgan*; *Askren v. Continental Oil Co.*, 252 U. S., 444, 449. The fees prescribed by the statute are beyond the cost of legitimate inspection to determine the quality of the articles inspected, and the act is therefore not only a police measure, but a revenue measure also. Such cost by necessary operation unduly burdens and obstructs the freedom of interstate commerce, and, as such commerce cannot be separated from the intrastate shipments, the whole tax is void.

Bowman v. Continental Oil Co., decided by the Supreme Court of the United States June 6, 1921, on which the defense places reliance, is distinguishable from the case at bar. The New Mexico law there under consideration imposed a tax of two cents per gallon upon all gasoline sold or used in that state. By the terms of the statute, every distributor was required to render to the auditor of state, on a form prescribed by such officer, a monthly statement of all gasoline received, sold, distributed or used by such distributor during the preceding month, and to transmit therewith a sum equal to two cents per gallon for all gasoline so sold, distributed or used during such preceding month. The statement so rendered was further required to show from whom the gasoline so received was purchased and by whom it was shipped. Every retail dealer was also compelled to file with such officer a monthly statement showing the gasoline received, sold and used by him and from whom the same was purchased. The statements so submitted would show, or in any event could be made to show at the election of the

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state auditor who prescribed the forms of returns, precisely what shipments were interstate and what were intrastate. The only duty assigned to inspectors was the examination of the books and accounts of distributors, retail dealers, warehousemen, and others receiving and storing gasoline, and of railroad and transportation companies, relating to purchases, receipts, shipments and sales of gasoline. The reports submitted to the state auditor would necessarily show upon their face what shipments were interstate and what were intrastate, and the ease with which the separation of the kinds of shipments could be made is apparent from the facts recited in the court's opinion. The situation presented to the court closely resembled that considered in *Ratterman v. Western Union Telegraph Co.*, 127 U. S., 411. The Ohio act under consideration contains no provisions akin to those above mentioned found in the New Mexico statute. Under the Ohio law inspectors may enter upon the premises of any manufacturer, vendor, or dealer in any fluid mentioned in the act and ascertain, and may require a statement showing, the quantity sold within any named period (Sec. 868), but their duty ends with their determination of the quantity of the specified fluids and the testing of the same in the statutory method. The statute does not contemplate that the oil inspector or his deputies shall concern themselves with where purchases were made or whence shipped, or that they shall make any report touching the same. In the *Bowman* case, the Supreme Court regarded the application of the tax to interstate commerce as separate from its application to intrastate commerce, condemning the impost on the former but sustaining it on the latter. We are asked in construing the Ohio law not only to view the impost with respect to two classes separately, but also to separate and apportion between them the expense of inspection, collection, and administration, and, having done so, to test the constitutionality of each by the result thus obtained, and to uphold the charge on interstate commerce as reasonable and that upon interstate commerce as a combined inspection fee and excise tax. The act makes no such separation of cost, nor does it afford any means for so doing. Were we to adopt the defendant's contention, we would be com-

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pelled to prescribe rules for the division of costs and to assume that the general assembly intended to levy on intrastate commerce a tax as well as an inspection fee; but this is not permissible, for the reason that in the interpretation of statutes levying taxes it is the established rule not to extend their provisions, by implication, beyond the clear import of the language used. *Gould v. Gould*, 245 U. S., 151, 153. Nor is *Saviers v. Smith*, 101 O. S., 132, involving the Ohio motor vehicle act, helpful to the defense upon the point upon which this opinion is thus far made to rest. That act provides for an annual license tax on the operation of motor vehicles on public highways of the state for the purpose of enforcing and paying the expense of administering the law and of maintaining and repairing such highways and streets. It is in no sense an inspection law and is not therefore subject to the limitation imposed by the Federal constitution on laws of that character, but rests upon the provisions of the state constitution relating to the power of taxation. The police regulations contained in it are merely incidental, relate to its administration and the regulation and registration of motor vehicles, and do not affect its main intended object. On its face it purports to be and was by the court held to be a tax law laid on a privilege for a manifest specific purpose, i. e., the production of revenue to be used as above stated. It was said by the court that, if the law raised sufficient to pay only the expense of administering it, it would not be a tax at all, but in the nature of a license. Its enactment was but an application of one of the state's constitutional methods of producing revenue for the maintenance and repair of state and county roads and the construction and maintenance of streets in municipalities.

Other questions discussed by counsel need not be decided. Phipps, as an individual, is dismissed from the case. As such he is not charged with the enforcement

Decree.

of the law. As against him as Director of the Department of Commerce, a temporary injunction may go.

Maurice H. Donahue,
Circuit Judge.

J. E. Sater,
District Judge.

J. W. Peck,
District Judge.

DECREE FOR INTERLOCUTORY INJUNCTION—

Filed February 9, 1922.

Comes now the complainant, The Cleveland Refining Company, by its counsel, C. D. Chamberlin, Esq., and Herbert M. Meyer, Esq.; and come the defendant, W. H. Phipps and W. H. Phipps as Director of Commerce of the State of Ohio, in person and by counsel and comes also John G. Price, Esq., Attorney General for the State of Ohio, and John M. Parks, Esq., and Ray Martin, Esq., Special Counsel for the Attorney General of the State of Ohio, and this cause coming on for hearing before Hon. Maurice H. Donahue, judge of the United States Circuit Court of Appeals for the Sixth Circuit, and Hon. John E. Sater, United States District Judge for the Southern District of Ohio, and Hon. John W. Peck, United States District Judge of the Southern District of Ohio.

It now appears to the court that notice has been duly served upon the defendant herein and upon the Honorable Governor of the State of Ohio that at this time and place, complainant would ask an interlocutory order of this court for a preliminary injunction pendente lite and said application for preliminary injunction pendente lite now coming on for hearing, and the court having heard argument of counsel for both plaintiff and defendant herein, and being fully advised in the premises grants said application, and it is now ordered, adjudged and decreed that defendant herein, W. H. Phipps as Director of Commerce of the State of Ohio and those acting under his authority be restrained and enjoined, pending this litigation and until the further order of the court from proceeding to enforce the provisions of a certain act of the General Assembly of the State of Ohio, approved May 19, 1915, entitled: "An Act to provide for the inspection

Petition for Appeal.

of petroleum, illuminating oils, gasoline and naphtha and the repeal of Sections 844 to 868, inclusive, of the General Code;" in the following respects, to wit: From demanding or enforcing, directly or indirectly, the payment or collection of any fee or fees for the inspection of oil, gasoline, petroleum-ether, or any fluid or substance into which petroleum or gasoline enter as a constituent element; from interfering with or in any way impeding plaintiff's business on account of the non-payment of such fees or until they are paid; and from in any manner proceeding to cause the arrest, prosecution or punishment of the plaintiff, or any other person, for any alleged violation of any of the provisions of said act of May 19, 1915, on account of the non-payment of such fees, until the further order of this court. To all of which findings, orders and decrees, the defendant, Director of Commerce of the State of Ohio, excepts and gives notice of his intention to appeal therefrom to the United States Supreme Court.

Maurice H. Donahue,
Circuit Judge.

J. E. Sater,
J. W. Peck,
District Judges.

PETITION FOR APPEAL—Filed February 15, 1922. To the Honorable John E. Sater, Judge of the United States District Court for the Eastern Division of the Southern District of Ohio, and one of the Judges Constituting the Special Tribunal in this Case Under Section 266 of the Judicial Code:

Whereas, the application of the plaintiff herein for a temporary injunction was referred to said Special Tribunal; and

Whereas, after due notice the said application for a temporary injunction against the defendants came on to be heard on the 19th day of January, 1921, before said Special Tribunal, and thereafter, to wit, on the 9th day of February, 1922, the writ prayed for was granted by the decree thereof, whereby the defendant, W. H. Phipps, as Director of the Department of Commerce of the State of Ohio, is enjoined;

Now comes the defendant, W. H. Phipps, as the Di-

Assignments of Error.

rector of said department, and prays an appeal from the judgment and decree aforesaid to the Supreme Court of the United States, and herewith submits his assignments of error, and prays for the reversal of said judgment and decree and for the dissolution of the writ of injunction granted, and for such other relief as may be proper.

John G. Price,

Attorney General of the State of Ohio, Solicitor for the Defendants.

Ray Martin,
Special Counsel,
John M. Parks,
Special Counsel,

Of Counsel for Defendants.

ASSIGNMENTS OF ERROR—Filed February 15, 1922.

Now comes the defendant, W. H. Phipps, as Director of the Department of Commerce of the State of Ohio, and as a part of the foregoing petition for appeal assigns as errors committed by the said Special Tribunal, in granting the temporary writ of injunction in said cause granted and thereon prays that the judgment and decree of the said Special Tribunal may be reversed and the cause remanded, with instructions to dissolve the said writ and to dismiss the bill, to wit:

1. The inspection fees required to be collected from the plaintiff, and those similarly situated, by the act of the legislature of the State of Ohio, of which complaint is herein made, are not greater than the reasonable expense necessary for the inspection of kerosene, gasoline and petroleum products shipped or transported into the state of Ohio in interstate business; that although the cost of inspecting intrastate shipments of such kerosene, gasoline and other petroleum products is not as great as the inspection fees collected therefor in the practical operation of said act, the cost of inspecting such interstate shipments is greater than the amount of inspection fees charged and collected therefor and said Special Tribunal erred in holding to the contrary.

2. In the practical enforcement and operation of said act as interpreted and administered by the officials of said State of Ohio, it was possible and practical to sep-

Order.

ately consider and determine the fees and cost of inspecting such kerosene, gasoline and petroleum products shipped in interstate commerce, compared with the inspection fee charged for such inspection, apart and distinguishable from the fees and cost of the inspection of such products in intrastate business compared with the fees charged therefor; that the official records of such inspections are and have been kept in such form and manner that such comparative cost of inspection in each of said kinds of shipment may be considered and separately determined; so that said act in practical operation is separable in its relation to and effect upon interstate commerce and said special tribunal erred in holding to the contrary.

John G. Price,
Attorney General of Ohio,
Ray Martin,
Special Counsel,
John M. Parks,
Special Counsel,
Solicitors to Defendant.

ORDER GRANTING APPEAL—Entered February 17, 1922.

This cause having come on to be heard this 17th day of February, 1922, upon the petition of the defendant for appeal to the Supreme Court of the United States from the interlocutory decree of the Special Tribunal, to which was submitted, granting a temporary writ of injunction against the defendant, W. H. Phipps, as director of the Department of Commerce of the state of Ohio, to restrain him from enforcing or attempting to enforce that particular statute of the state of Ohio, which is the subject matter of the bill of complaint herein, the defendant appearing by John M. Parks and Ray Martin, special counsel to the attorney general of the state of Ohio, and counsel for the defendant, and the plaintiff appearing by Charles D. Chamberlin, Esq., one of its solicitors, and the court having seen and considered the assignments of error exhibited with the petition for appeal;

It is ordered that an appeal be and the same hereby is

Appeal Bond.

granted to the Supreme Court of the United States from the judgment and decree aforesaid.

It is further ordered that the defendant give bond for costs according to the statute and the rule in the penal sum of \$500.

It is further ordered that the clerk of the United States District Court, without delay, certify and transmit to the clerk of the Supreme Court of the United States a full and true transcript of the proceedings in this cause, including the complaint, the answer, the order of reference, under Section 266 of the Judicial Code, to three judges, the original exhibits and depositions introduced in the hearing of said plaintiff's motion for a temporary injunction, the memorandum opinion of the three judges, the order granting a temporary injunction, the temporary injunction bond, the petition for appeal, with assignments of error, the order granting the appeal and the appeal bond.

J. E. Sater,

Judge of the United States District Court for the Southern District of Ohio, Eastern Division, and one of the Judges of the Special Tribunal in the Cause Aforesaid.

APPEAL BOND—Filed February 17, 1922.

Know all men by these presents, that we, W. H. Phipps, Director of the Department of Commerce of the State of Ohio, as principal, and American Surety Company, of New York City, a corporation duly authorized to make bonds in the courts of the United States, as surety, are held and firmly bound unto The Cleveland Refining Company, of Cleveland, Ohio, in the full and just sum of Five Hundred (\$500) Dollars, to be paid to the said Cleveland Refining Company, its successors and assigns, to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, and successors, jointly and severally by these presents.

Sealed with our seals and dated this 13th day of February, 1922.

Whereas, lately, on the 9th day of February, 1922, a Special Tribunal, under section 266 of the United States Judicial Code, composed of Honorable Maurice H. Donahue, one of the Justices of the United States Court of

Appeal Bond.

Appeals, and Honorable John E. Sater and Honorable John Weld Peck, Judges of the United States District Court, in a matter pending before it for a temporary injunction on the application of the said Cleveland Refining Company, as plaintiff, and the principal herein as one of the defendants, judgment was rendered and order made for an interlocutory writ of injunction against the said principal and the said principal having obtained the allowance of an appeal to the Supreme Court of the United States to reverse the said judgment and order in the aforesaid suit which is pending in the District Court of the United States for the Southern District of Ohio, Eastern Division, and a citation directed to the said Cleveland Refining Company, citing and admonishing it to be and appear before the Supreme Court of the United States, at the city of Washington, in the District of Columbia, sixty days from and after the date of said citation.

Now, the condition of the above obligation is such that if the said principals shall prosecute said appeal to effect, and pay all costs, if they fail to make good said plea, then the said obligation to be void; otherwise to remain in full force and virtue.

W. H. Phipps,

Director of the Department of Commerce of the State of Ohio.

[Seal.] American Surety Company of New York,
Bonding Company.

By J. H. Knecht,
Resident Vice-President.

Attest: F. M. Merrin,
Resident Asst. Secretary.

Witnesses:

C. E. Spring.

Ray Martin.

The foregoing bond and the security furnished thereby are hereby approved and the petition for appeal herein granted.

J. E. Sater,

Judge of the United States District Court, Southern District of Ohio, Eastern Division, and one of the Judges of the Special Tribunal in the Cause Aforesaid.

February 17, 1922.

CITATION—Filed February 25, 1922.

United States Supreme Court. United States of America, Sixth Judicial Circuit, ss.—To The Cleveland Refining Company of Cleveland, Ohio, Greeting:

You are hereby cited and admonished to be and appear at a session of the United States Supreme Court, to be holden in the City of Washington, within thirty days from the date hereof, pursuant to an Appeal filed in the Clerk's Office of the District Court of the United States for the Southern District of Ohio, wherein W. H. Phipps, as Director of the Department of Commerce of the State of Ohio, is appellant and you are appellee, to show cause, if any there be, why the decree rendered against the said appellant as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable William Howard Taft, Chief Justice of the United States, this 17th day of February, in the year of our Lord one thousand nine hundred and twenty-two, and of the Independence of the United States of America the one hundred and forty-sixth.

J. E. Sater,

U. S. District Judge, Southern District of Ohio.

Acknowledgment of Service.

The Cleveland Refining Company, of Cleveland, Ohio, to whom the within citation is directed, hereby acknowledges the receipt and service of said citation this 21st day of February, 1922.

The Cleveland Refining Company,

Cleveland, Ohio.

By C. D. Chamberlin,

Its Solicitor.

PRECIPE FOR TRANSCRIPT—Filed February 18, 1922.

To the Clerk:

Please prepare a transcript of record of the said cause on appeal to the Supreme Court of the United States, containing the following items:

1. The complaint.
2. The notice of hearing to the Attorney General of Ohio and Governor of the State of Ohio.

Præcipe.

3. The subpoena in chancery and the marshal's return thereof.
4. The answer.
5. The deposition of the defendant.
6. The memorandum opinion of Special Tribunal.
7. The order granting a temporary injunction.
8. The petition for appeal.
9. The assignments of error.
10. The order granting the appeal.
11. The appeal bond.
12. The citation on appeal with acknowledgment of service thereof.
13. This præcipe.
14. The clerk's certificate.

John G. Price,
Attorney General of the State of Ohio,
Ray Martin,
Special Counsel.
John M. Parks,
Special Counsel.

Solicitors for the Defendant.

It is hereby stipulated and agreed by counsel for the parties to the above entitled cause that the above and foregoing præcipe calls for the preparation of a transcript of record in said cause, containing all matters necessary or proper for the consideration of said cause on appeal to the Supreme Court of the United States.

The Cleveland Refining Company,
Plaintiff.

By C. D. Chamberlin,
For Chamberlin & Fuller.
W. H. Phipps,

Director of the Department of Commerce of the State of Ohio, Defendant.

By John G. Price,
Attorney General, Solicitor for Defendant.

ENTRY EXTENDING TIME TO FILE TRANSCRIPT—Entered March 15, 1922.

On application of the defendant, W. H. Phipps, as Director of the Department of Commerce of the State of Ohio, and for good cause shown to the court, it is ordered that the time within which to prepare the transcript of record in this case in the Supreme Court of the United States be and the same hereby is extended thirty days from March 15, 1922.

CLERK'S CERTIFICATE.

The United States of America, Southern District of Ohio,
Eastern Division:

I,, clerk of the District

Court of the United States of America, within and for the division and district aforesaid, do hereby certify that the foregoing is a true and complete transcript of the proceedings had by and before said court in the above entitled cause, as the same appears of record and on file in the clerk's office of said court.

In witness whereof, I have hereunto set my hand and affixed the seal of said court at the city of Columbus, Ohio,

this day of, 1922.

.....

Clerk.

.....

Deputy.

UNITED STATES OF AMERICA,
Sixth Judicial Circuit, ss:

United States Supreme Court.

To The Cleveland Refining Company of Cleveland, Ohio, Greeting:

You are hereby cited and admonished to be and appear at a session of the United States Supreme Court, to be holden at the City of Washington, within thirty days from the date hereof, pursuant to an Appeal, filed in the Clerk's Office of the District Court of the United States for the Southern District of Ohio, wherein W. H. Phipps as Director of the Department of Commerce of the State of Ohio is appellant and you are appellee, to show cause, if any there be, why the decree rendered against the said appellant as in the said Appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable William Howard Taft, Chief Justice of the United States, this 17th day of February, in the year of our Lord one thousand nine hundred and twenty-two, and of the Independence of the United States of America the one hundred and forty-sixth.

J. E. SATER,
U. S. District Judge, Southern District of Ohio.

Acknowledgment of Service.

The Cleveland Refining Company, of Cleveland, Ohio, to whom the within citation is directed, hereby acknowledges the receipt and service of said citation this 21st day of February, 1922.

THE CLEVELAND REFINING COMPANY,
CLEVELAND, OHIO,
By C. D. CHAMBERLIN,
Its Solicitor.

[Endorsed:] Filed Feb. 25, 1922. B. E. Dilley, Clerk.

Endorsed on cover: File No. 28,820. S. Ohio D. C. U. S. Term No. 865. W. H. Phipps and W. H. Phipps, as director of the Department of Commerce of the State of Ohio, appellant, vs. The Cleveland Refining Company of Cleveland, Ohio. Filed April 10th, 1922. File No. 28,820.

FILED
MAY 22 1922
WM. R. STANSBURY
CLERK

United States Supreme Court.

No. 33. 324

October Term, 1921.

W. H. PHIPPS, AND W. H. PHIPPS AS DIRECTOR
OF THE DEPARTMENT OF COMMERCE OF
THE STATE OF OHIO,

Appellant,

vs.

THE CLEVELAND REFINING COMPANY OF
CLEVELAND, OHIO,

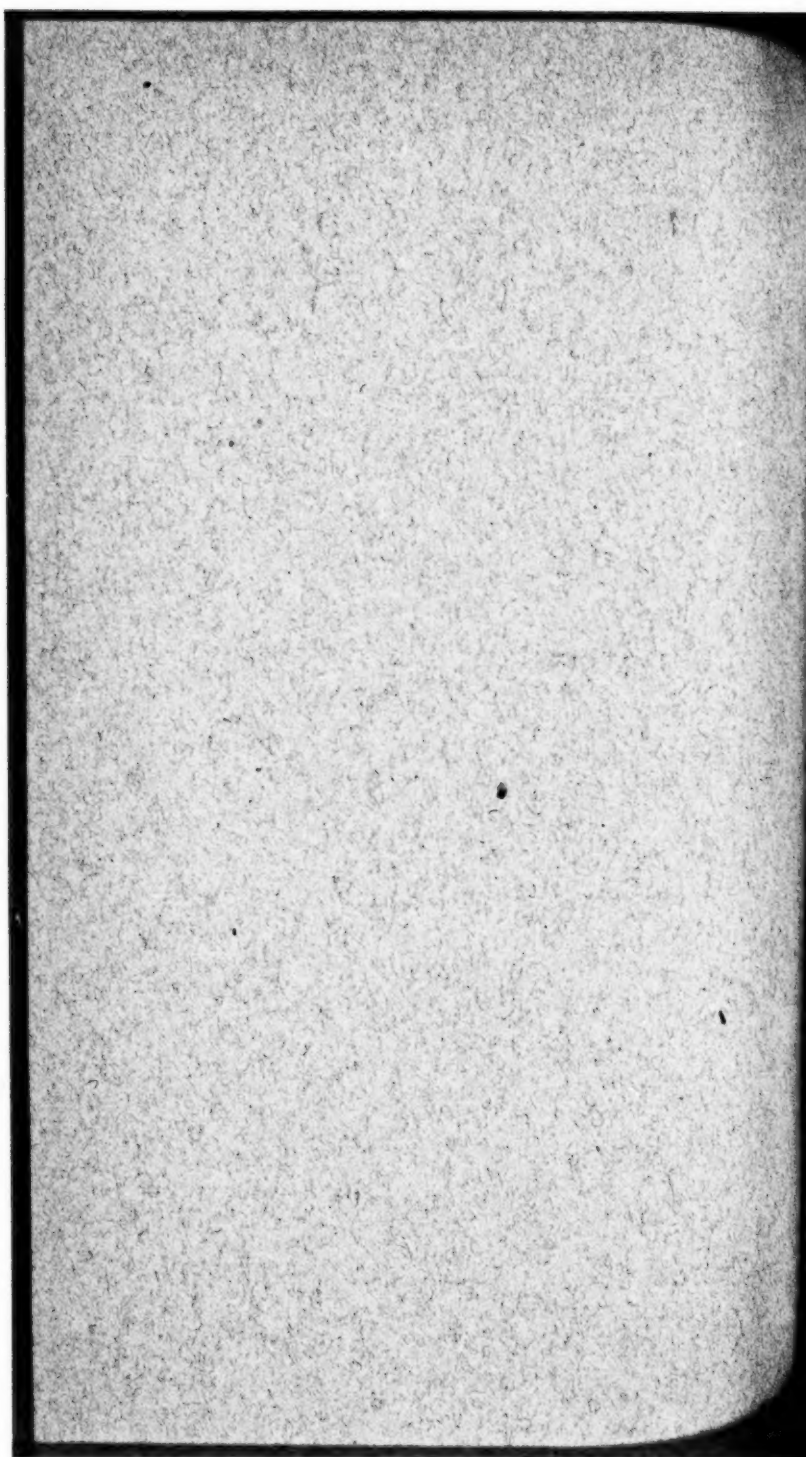
Appellee.

BRIEF OF APPELLANT.

JOHN G. PRICE,
Attorney General of Ohio.

JOHN M. PARKS,
Special Counsel.

RAY MARTIN,
Special Counsel.



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United States Supreme Court.

No. 865.

October Term, 1921.

W. H. PHIPPS, AND W. H. PHIPPS AS DIRECTOR
OF THE DEPARTMENT OF COMMERCE OF
THE STATE OF OHIO,

Appellant,

vs.

THE CLEVELAND REFINING COMPANY OF
CLEVELAND, OHIO,

Appellee.

BRIEF OF APPELLANT.

STATEMENT OF CASE.

This cause comes here on appeal under Section 266
of the Judicial Code (1243 U. S. R.) from the decree of

a special tribunal provided for in said section and composed of Hon. Maurice H. Donahue, United States circuit judge, Hon. John E. Sater, district judge, and Hon. John W. Peck, district judge, sitting at Columbus, Ohio, in the United States District Court for the Eastern Division, Southern District of Ohio. The decree appealed from was a decree for an interlocutory injunction, restraining the appellant, W. H. Phipps, as director of commerce of the State of Ohio, from enforcing the major part of an act of the general assembly of Ohio entitled "An Act to provide for the inspection of petroleum, illuminating oils, gasoline and naphtha and the repeal of Sections 844 and 868, inclusive, of the General Code," filed in said District Court on February 9, 1922. In the District Court the appellee was the plaintiff and the appellant was defendant, and in the statement of the case in the District Court will be referred to in that capacity.

In its bill of complaint in equity the plaintiff, reciting that it was a corporation organized under the laws of Ohio, with its principal place of business in East Cleveland, Ohio, stated that it was engaged in the manufacture and sale of petroleum and its products; that the defendant, W. H. Phipps, was the director of the department of commerce of the State of Ohio and as such director charged with the duty and clothed with the power of enforcing the laws of the State of Ohio with reference to the inspection of petroleum and its products.

On or about the nineteenth day of May, 1915, the general assembly of Ohio passed the act above referred to, providing for the inspection of petroleum and its prod-

acts, said act being numbered in the General Code of the State of Ohio as Sections 844 to 868, inclusive. It is found in Vol. 106, Ohio Session Laws, page 309.

Said complaint recited that the plaintiff was engaged in buying and shipping into the State of Ohio from other states of the United States large quantities of petroleum products, in tank cars, barrels, cans and other packages, and has contracts and arrangements for such goods which it is bound to and can only consummate through its established business without great loss to itself and deprivation and inconvenience to the public. The plaintiff complained of numerous constitutional defects in this act. See pages 4, et seq. of the record herein. However, the principal complaint was that the act was repugnant to the provisions of Article 1, Section 10, Clause 2, of the constitution of the United States, forbidding states from laying imposts without the consent of congress upon interstate commerce, except such as may be absolutely necessary for the execution of inspection laws. It also claimed that the act violated Section 1, Article 8, giving to congress the power to regulate commerce among the several states. Although as stated there were other objections, these two specifically noted were the principal objections relied upon by the plaintiff and were the ones upon which the special tribunal founded their decree for the interlocutory injunction herein. (See page 81 of the Record.)

In the complaint the plaintiff set out in detail for years the total receipts, disbursements and resultant revenue to the State of Ohio of the act in question for five years

beginning July 1, 1915, and ending July 1, 1920. The totals of these were as follows:

Receipts	\$639,057.47
Disbursements	321,188.68
Revenue	317,868.79
Outstanding accounts.....	65,385.34

The defendant, director of the department of commerce, filed an answer where, among other things, he admitted that the statement of receipts, disbursements and net revenue resulting from the inspection, as above referred to, was substantially correct. He said further, however, that no part of said net revenue was derived or did accumulate from inspections and fees thereon in interstate shipments; that such interstate shipments required inspection at destination or place of delivery thereof, entailing and requiring a greater expenditure of time and money than intrastate inspections and that the cost of making such interstate inspections was equal to and greater than the fee collected therefor. Whatever net revenue or profit resulted came solely and entirely from intrastate shipments and that the interstate inspections resulted in a loss to the state.

The defendant denied that the act was an abuse of the police power of the state or of the power of taxation as it related to intrastate business and did not burden interstate commerce or lay any impost or duty thereon beyond an inspection fee absolutely necessary for its execution. (See page 15 of Record.)

The special tribunal, composed as aforesaid, however, found that the law in its application to the two classes of

commerce above referred to was not separable and that the inspection fees prescribed by the statute were beyond the cost of legitimate inspection, and by necessary operation unduly burdened and obstructed the freedom of interstate commerce, and as such commerce could not be separated from the intrastate shipments, the whole tax was void. (See 83 of the Record.)

Our assignment of error in appeal from the decree of said special tribunal present the questions involved here. They are:

"1. The inspection fees required to be collected from the plaintiff, and those similarly situated, by the act of the legislature of the state of Ohio, of which complaint is herein made, are not greater than the reasonable expense necessary for the inspection of kerosene, gasoline and petroleum products shipped or transported into the state of Ohio in interstate business; that although the cost of inspecting intrastate shipments of such kerosene, gasoline and other petroleum products is not as great as the inspection fees collected therefor in the practical operation of said act, the cost of inspecting such interstate shipments is greater than the amount of inspection fees charged and collected therefor and said special tribunal erred in holding to the contrary.

2. In the practical enforcement and operation of said act as interpreted and administered by the officials of said state of Ohio, it was possible and practical to separately consider and determine the fees and cost of inspecting such kerosene, gasoline and petroleum products shipped in interstate commerce, compared with the inspection fee charged for such inspection, apart and distinguishable from the fees and cost of the inspection of such products in **intrastate** business compared with the fees charged therefor; that the official records of such inspec-

tions are and have been kept in such form and manner that such comparative cost of inspection in each of said kinds of shipment may be considered and separately determined; so that said act in practical operation is separable in its relation to and effect upon interstate commerce and said special tribunal erred in holding to the contrary."

These assignments are reducible to these propositions:

1. The state's cost of interstate inspection is greater than the fees charged therefor.
2. In practical administration the comparative cost of interstate inspection is ascertainable as distinguished from the cost of intrastate inspection.

The Ohio oil inspection law being of general application to both of these propositions, a brief analysis of it, with the general rule as to the proper presumption, may properly precede their separate discussion.

THE OHIO OIL INSPECTION LAW.

The present act was passed in 1915 and is Sections 844 to 868 of the General Code of Ohio. The first two Sections, 844 and 845, relate to the appointment and qualification of a state inspector of oils. These two sections have been qualified by Section 154-39, General Code of Ohio, and known as the Ohio Administrative Code, being found in 109 O. L., 117, to the extent that the director of the department of commerce is given the power and charged with the duty of carrying out the oil inspection law in the place of the state inspector of oils, as originally provided for. By Section 846 it is made the duty

of the defendant "to inspect all illuminating oils offered for sale within the state, for consummation therein, as hereinafter provided in this act." Sections 847, 847-1 and 848 prescribe the duties of deputy inspectors. Section 849 is as follows:

"For inspections under the provisions of this chapter, each deputy inspector of oils shall receive a fee of three cents for each barrel of oil, of fifty gallons, inspected by him, and his actual and necessary traveling expenses incurred while engaged in the discharge of the duties of his office. Such compensation and expenses shall be paid from the fees collected under the provisions of the next following section, but no deputy inspector shall receive more than twelve hundred dollars nor less than seven hundred and twenty dollars in any year in addition to his expenses."

Section 850 is as follows:

"Each owner of oil inspected under this chapter shall pay the state for inspection the following fees:

For a single barrel, package or cask, twenty-five cents.

When the lot inspected does not exceed ten barrels of fifty gallons each in the aggregate, for each barrel, fifteen cents.

When the lot inspected does not exceed fifty barrels of fifty gallons each in the aggregate, for each barrel, ten cents.

When the lot inspected exceeds fifty barrels of fifty gallons each in the aggregate, for each barrel, three cents.

All fees under this chapter shall be payable on demand of the treasurer of state and in no case shall payment thereof be deferred beyond the tenth of the next month after the inspection is made, and such fees shall be a lien on the oil so inspected."

Sections 857 and 852 require a record and monthly report of inspections to be made, the former providing the state inspector, now director of commerce, "keep a record of oils inspected, showing the date of inspection, number of barrels, and the name of the person for whom inspected, which shall be open to examination by all persons interested."

Section 852, relating to the monthly report of deputy inspectors, is as follows:

"On the first day of each month, each deputy inspector of oils shall make return to the state inspector of all inspections made during the preceding month. Such return shall show the quantity inspected, date of inspection and the name of the person for whom inspected. At the same time he shall file a duplicate copy of such return with the auditor of state. The fees received or collected by a deputy inspector shall be transmitted immediately to the state inspector."

Section 854 requires all illuminating fluids or substances, the product of petroleum, or into which petroleum or its products enter, whether manufactured within this state or not, to be inspected before being offered for sale within this state.

Sections 855, 856, 857 and 858 contain directions for inspection, the flashing test for illuminating oil and provision for testing apparatus and for duties relative to the test of oils.

Section 859 prohibits the sale of rejected oils, providing a penalty for such sale, while Section 860 requires a certificate of inspection to be attached to a car when inspected in the car. Section 861 prohibits the sale of rejected oil from tank cars.

Sections 862, 863 and 864 provide regulations for the sale and delivery of oil from wagons, containers and tank lines and are practical regulations not especially important to the question involved. Section 865, relating to the inspection of gasoline, is as follows:

"Gasoline, petroleum-ether or similar or like substances, under whatever name called, whether manufactured within this state or not, having a lower flash test than provided in this chapter for illuminating oils, shall be inspected by the state inspector of oils. Upon inspection, the state inspector shall affix by stamp or stencil to the package containing such substance a printed inscription containing its commercial name, the word 'dangerous,' date of inspection and the name and official designation of the officer making the inspection. **For such inspections, the state inspector shall receive the same fees as for the inspection of oils, which shall be paid into the state treasury, as herein provided for other fees.** Such fees shall be a lien on the gasoline, petroleum-ether or similar substance so inspected. For such inspection, deputy inspectors shall receive the same fees and shall make monthly report of such inspections, as provided herein for the inspection of oils. Whoever sells or offers for sale any gasoline, petroleum, ether, or similar or like substance not stamped as provided in this chapter shall be fined not more than one thousand dollars or imprisoned, in the county jail not exceeding twenty days or both."

The next section, 866, makes the provisions relating to oil inspection apply "so far as practicable" to the inspection of gasoline and similar substances. Section 867 is an exemption statute as follows:

"No provision of this chapter shall require the inspection of miners' lamp-oil, paraffine wax, fuel oil for fuel purposes under boilers for generating steam,

furnaces or retorts in place of other fuel in manufacturing plants, or gas-making material when sold to gas works for manufacture of gas."

Sections 868, 869 and 870 relate to the inquisitorial power of the inspector and the responsibility and civil liability of dealers in case of the selling or offering for sale of uninspected products and for willful sale for illuminating purposes of oil below the required test. The last section, 871, prohibits the inspector from trafficking in oils and provides the reference of disputes between the inspector and manufacturer or dealer.

PRESUMPTIONS.

This court in *Western Union Telegraph Co. v. New Hope*, 187 U. S., 417, held that "prima facie the charge for inspection in an act otherwise constitutional is reasonable."

Another decision of this court in *Red "C" Oil Co. vs. Board of Agriculture*, 222 U. S., 380, 392, forecloses any question as to oil inspection being a proper exercise of the police power.

"The conceded fact that in thirty-five states of the union oil inspection laws are in force is sufficient to adversely dispose of the first of these question."

This court in the case of *Hall vs. Geiger Jones*, 242 U. S., 537, has declared that as to official acts the presumption is that:

"It is to be presumed that the executive officer will act properly in the public interest and not wantonly or arbitrarily."

In a more recent case, *Standard Oil Company vs. Graves*, 249 U. S., 389, it is settled that:

“The construction of a state statute must be judged by its necessary effect; the name is not conclusive.”

See also *Pure Oil Company vs. Minn.*, 248 U. S., 158.

**THE STATES COST OF INTERSTATE INSPECTION
IS GREATER THAN THE FEES CHARGED
THEREFOR.**

This is purely a question of fact which on appeal in this kind of a case is reviewable in this court.

In this case an answer was filed. See page 12 of the record. Consistent with the practice in the District Court, evidence was also introduced in the hearing of the application for the interlocutory injunction. The only evidence introduced was the deposition of W. H. Phipps, director of the Department of Commerce of Ohio. This deposition is found in the record beginning at page 16. Mr. Phipps had formerly been state oil inspector and under Section 155 was and still is director of the Department of Commerce of Ohio. The testimony of Mr. Phipps, at pages 16 and 17, shows that he, by practical experience and observation, was well qualified to furnish definite and reliable expert evidence on the practical operation of the law. His testimony is entirely uncontradicted. It shows that aside from his previous practical experience, upon the filing of the petition in this case he made a thorough and exhaustive analysis of the comparative profit or revenue derived from interstate and intrastate

inspections. He took from original records typical or representative inspections in all of the districts of the state of a sufficient number to indicate a fair average. His method in ascertaining the facts and the source of such facts are found on pages 17, 18 and 20 of the record.

He was asked this question with reference to the abstracts submitted:

“Q. You may state whether or not, from your experience and observation in the work of official inspection of petroleum products, those are representative of the inspections generally throughout the state. A. They are.” (Pp. 21 and 22, record.)

As shown at page 22, record, he was asked:

“Q. State if, from your previous experience in such matters, and from such examination as you have made from the records and from such other facts of which you have personal knowledge, you are able to state whether or not the cost of inspecting interstate shipments is greater than the fees collected therefor? A. I am.

Judge Chamberlin: I object.

Q. Mr. Phipps, independent of those memoranda, I want you to state, from your experience above mentioned, the cost of interstate inspections compared with the fees collected therefor.

* * * (Objection.)

A. Interstate inspection, in so far as expenses of those inspections are concerned, shows that the fees received for those inspections are considerably less than the cost of the inspections and that as a net sum it would result in the loss to the state of several thousands of dollars.”

On cross-examination, at page 27, record, Mr. Phipps was asked this question:

"Q. Is it possible for you and your deputies to absolutely determine the inspections of interstate and intrastate transactions? A. Yes, absolutely."

And at page 28:

"Q. If all of the oil were inspected at the refineries of the state, and there was no interstate shipments of oil to inspect— A. I could do it that way with five inspectors."

Q. And the cost of inspection would be very much less? A. Very much less if there were no interstate shipments."

At page 29 of the record, without quoting a number of preliminary questions, which the court will undoubtedly read, Mr. Phipps was asked these last two questions:

"Q. State whether or not in your judgment interstate inspection has resulted in a profit to the state from the time that the inspectors were put on a separate salary? A. I don't think the inspection of interstate shipments into Ohio ever at any time showed a profit to the state."

Q. I don't know whether you understood my former question or not, but I want now to ask you if the records to which you have referred, and from which these so-called abstracts were made, are original and official records? A. They are."

Exhibit "A," at page 30 of the record, shows the seventeen inspection districts with their respective inspectors. Exhibits 1 to 17 inclusive, at pages 31 to 52 of the record, are abstracts taken from the reports of the inspectors from the seventeen districts, showing representative or typical inspections made in each of said districts, with

the amount of fees charged and the cost of such inspection, and a gain or loss as the case may be.

Exhibits 17a and 18, on pages 53 and 54 of the record are additional abstracts representing interstate inspections chosen from different parts of the state in car load inspections. In Exhibit 18 is a comparative table showing the difference in cost between local inspections and inspections requiring traveling expense. Attached Exhibits 17 and 17a were original cards of notification to the oil inspector by the shipper, the method of which is referred to by Mr. Phipps in his testimony on cross examination in the first answer on page 24 of the record. The record of these cards attached to the exhibits referred to is at pages 58 to 78, inclusive. On each card are the figures showing the inspection fees charged. This follows each copy of the card as it appears at the page indicated.

The deposition in this case was taken at the order of the court with very little time left for the preparation of an analysis of the various reports, and it was afterward noted that no summary was made of the abstracts by districts. Hence to facilitate the consideration of Mr. Phipps' analysis, such district abstracts are summarized as follows:

	Total Fees	Total Cost	Net Loss
District No. 1	\$ 43.20	\$ 85.92	\$ 42.72
District No. 2	38.40	60.89	22.49
District No. 2	9.85	18.83	8.98
District No. 3	91.20	253.11	161.91
District No. 4	58.50	64.04	5.54

District No. 5....	81.60	130.99	49.39
District No. 6....	86.40	146.10	59.70
District No. 7....	62.40	174.12	111.72
District No. 8....	120.60	286.82	146.82
District No. 9....	115.20	202.19	86.99
District No. 10....	57.60	100.15	42.55
District No. 11....	76.80	126.05	49.25
District No. 12....	90.00	91.09	.09
District No. 13....	91.20	136.38	45.18
District No. 14....	91.20	167.70	86.50
District No. 15....	57.50	124.22	66.62
District No. 16....	43.20	124.81	81.61
District No. 17....	91.20	195.60	104.40
	<u>\$1305.45</u>	<u>\$2490.01</u>	<u>\$1184.56</u>

Total net less on typical inspections on inter-
state shipments taken, as indicated, from
all the districts of the state,\$1184.56

In the light of this evidence we say it has been definitely and positively shown that whatever may be the result as to interstate inspections, no profit has accrued to the state from interstate inspection. So far as questions arising under Sections 8 and 10, Article 1 of the United States constitution, relating to interstate commerce, this is decisive. The only showing that the amount of fees fixed by this law is in excess of the reasonable amount necessary for the enforcement of the inspection of interstate commerce is the general allegation in the complaint admitted in the answer that the revenue derived from all inspections for five years amounts to \$317,868.79, not including outstanding accounts. This allegation relates

to inspections generally. At the threshold it is met with the positive and direct allegation in the answer of the defendant that "no part of said net revenue was derived or did accumulate from inspections and fees thereon * *. Said net revenue and profit resulted solely and entirely from purely intrastate shipments and that the inspection of interstate shipments resulted in a loss to the state." (See page 15, Record.)

These allegations in the answer are so clearly shown by uncontradicted testimony that there is no escape from the conclusion that the expense of interstate inspection exceeds the fees charged. Whatever **presumption** of profit on interstate inspection arises from the general result of the law is completely overcome by **facts** relating specially to interstate inspection. It is special facts opposed to **presumption**. In such a case the plaintiff was bound to meet and disprove our evidence before it was entitled to judgment below.

IN PRACTICAL ADMINISTRATION THE COMPARATIVE COST OF INTERSTATE INSPECTION IS ASCERTAINABLE AS DISTINGUISHED FROM THE COST OF INTRASTATE INSPECTION.

Much of what has been said on the first proposition is applicable here. At this point attention may be directed to the memorandum opinion of the Special Tribunal which made the order complained of here. It begins at page 78 of the Record. We believe that the Special Tribunal did not quite fully understand the state's contention in this case in this, that regardless of whether the

law could or should be interpreted as providing for separate records of the cost of inspection of the two classes of shipments, if it could not be shown that the cost of inspection of interstate shipments was greater than the fees collected for that kind of inspection, as provided by law, then the law was not in conflict with the commerce clauses of the federal constitution. It is true that we insisted that in the practical enforcement and administration of the law it was possible to determine the relative cost of interstate inspections as distinguished from such cost on intrastate inspections. At page 84 of the opinion the special tribunal said:

"We are asked in construing the Ohio law not only to view the impost with respect of two classes separately, but also to separate and apportion between them the expense of inspection, collection and administration, and, having done so, to test the constitutionality of each by the result thus obtained, and to uphold the charge on interstate commerce as reasonable and that upon intrastate commerce as a combined inspection fee and excise tax."

What we did insist upon was that so far as the commerce clauses of the federal constitution are concerned, the cost of the interstate inspections, compared with the fee charged therefor, was the only thing necessary to determine. It makes no difference whether the act is severable or not if the interstate inspection fees are not greater than the cost of inspection.

The special tribunal further said:

"The act makes no such separation of cost, nor does it afford any means for so doing. Were we to adopt the defendant's contention, we would be com-

pelled to prescribe rules for the division of costs and to assume that the general assembly intended to levy on intrastate commerce a tax as well as an inspection fee; but this is not permissible, for the reason that in the interpretation of statutes levying taxes it is the established rule not to extend their provisions, by implication, beyond the clear import of the language used. *Gould v. Gould*, 245 U. S., 151, 153."

It is true that the law does not explicitly provide for any distinction in the records to be kept by the director of commerce as to the two classes of shipments. However, Section 851, *supra*, does require a record of the inspection to be kept and since the passage of the administrative code, above referred to, the defendant director of the department of commerce has power to prescribe regulations not inconsistent with law "for the government of his department, the conduct of its employees, the performance of its business and the custody, use and preservation of the records, papers, books, documents and property pertaining thereto." See Section 150-8, General Code of Ohio, as enacted in 109 O. L., page 107. This power is in addition to the powers conferred by the oil inspection law directly. We submit that while the act makes no provision for such separation of cost, in its grant of power to the director of the department of commerce it does afford means for so doing and the holding to the contrary by the special tribunal was erroneous. But it is essential to a clear understanding of the state's position that it is now made clear that under the federal constitutional commerce clauses, the sole subject of inquiry is the comparison of interstate inspection fee with

cost. Whether or not there is a profit on intrastate inspection is of no consequence in this phase of the case. The comparison of the cost of the two classes of inspections is competent only to account for the net profit of all inspections.

This court, in the case of *Ratterman vs. Western Union Company*, 127 U. S., 411, 32 Law Ed., 229, held that a single state tax on receipts derived partly from interstate and partly from intrastate commerce and returned and assessed in gross, without separation or apportionment, so far as levied upon receipts derived from interstate commerce, was void, but so far as levied upon receipts from intrastate commerce it was valid.

In the *Standard Oil* case, *supra*, 249 U. S., 289, it is held that "the construction of a state statute must be judged by its necessary effect; the name is not conclusive."

It is true that in the case of *Castle v. Mason*, 91 O. S., 296, 304, it was held that this law, prior to its amendment, was unconstitutional in that the inspection fee was unreasonably greater than the cost of inspection and that the law violated the commerce clauses above referred to. However, immediately following the decision in that case the legislature amended the law and reduced the inspection fee fifty per cent. The only question of separate consideration was as to gasoline and oils which is not applicable to the present case.

The question presented in this case, however, was not presented to or considered by the Supreme Court of Ohio in that case, but it is logical to conclude that had the

evidence shown as clearly as it shows here that the cost of inspecting interstate shipments was greater than the fee charged therefor, the decision of the Supreme Court of Ohio in that case would have been different. It is apparent that the sole reason of the Supreme Court of Ohio for declaring the law unconstitutional was the preponderance of fee over cost with no allegation or evidence as in the present case. See the opinion of the court at page 307.

"We are, therefore, constrained to hold that the inspection act necessarily operates and imposes a burden upon commerce from other states and that in so far as the same affects such commerce it violates the federal constitution and is unconstitutional and void for the reason that it imposes a burden upon such commerce largely in excess of the expense necessary for inspection."

This law was immediately amended after this decision. The fee was reduced fifty per cent. The evidence conclusively shows that interstate fees do not exceed cost of inspection.

We believe that what this court said in *Bowman, Attorney General, vs. Continental Oil Co.*, decided June 6, 1921, in U. S. Advance Opinions, 1920-1921, pages 720, 721, is applicable. In that case the court said of the excise tax of the State of New Mexico that the

"divisible nature of the subject renders it feasible to control the operation and effect of the tax so as to prevent it being imposed upon sales in interstate commerce, while allowing the state to enforce it with respect to domestic transactions; and with the allowance of injunction limited accordingly, plaintiff will receive the full protection to which it is entitled under the constitution of the United States."

While this case is not directly in point, as the New Mexico law was purely a taxation measure, comprehending a license fee upon all distributors and retailers of gasoline and an excise tax per gallon upon the sale and use of gasoline, the license tax being incapable of severability was held to be void and the excise tax was sustained as applied to intrastate commerce. This is different from the law in Ohio which is a police measure in its principal objects. But this holding in the New Mexico case does show that notwithstanding the lack of explicit direction or requirement in the law, if it is so administered that interstate commerce is not burdened beyond the reasonable cost for the enforcement of inspection laws those engaged in interstate commerce are receiving the protection to which they are entitled under the constitution.

We submit that we are not confronted with the question of divisibility of the law or divisibility of application, or in fact with any question of divisibility. The only question is as to reasonableness of inspection fees for interstate inspections. The only suggestion of divisibility arises in determining whether the cost of interstate inspections is ascertainable. Does not this narrow our case down to this: Is it possible to determine the actual cost of interstate inspections? This is a practical question. It is moreover a question of fact. The evidence is all one way. Those charged with enforcement of this law have spoken. They say that this cost is ascertainable and that it is greater than the fees collected. This evidence is not denied in any way. It was ignored by the

special tribunal which was mislead in the application of the rule of this court, where questions of divisibility of law in its relation to the two kinds of commerce were involved. We submit that the reasons given in the memorandum opinion of the special tribunal for ignoring this evidence are insufficient; it ignores the substance and gets lost in the shadow. The object of the commerce clauses is to prevent the imposition of imposts or taxes, controlling, regulating or hindering interstate commerce by states, except such fees as are reasonably necessary for the execution of the state's inspection law. If it is possible to show that such inspection fees do not exceed the cost of inspection, and such fact is shown clearly, how can it be claimed that the commerce provisions are violated. Is it any answer to this fact, which contains the whole equity, to say that the law makes no provision for separate apportionment or ascertainment of the cost of the two kinds of inspections? We conceive it to be within the power, duty and traditions of this court, in reconciling and maintaining the balance of federal and state powers, to protect and guard the one as jealously as the other. Hence, before striking down a state statute this court is anxious to know how the act actually affects the complainant, or, as Mr. Justice Hughes, speaking for this court in *Standard Stock Food Co. v. Wright*, 225 U. S. 540, 551, said:

“One who would strike down a state statute as violative of the federal constitution, must bring himself by proper averments and showing within the class as to whom the act thus attacked is unconstitutional. He must show that the alleged unconstitutional feature of the law **injures him and so operates** as to deprive him of rights protected by the federal constitution.”

ISSUES UNDER STATE CONSTITUTION.

It is probable that the reference in the memorandum opinion of the special tribunal in this case to questions raised under the state constitution should be considered in this brief.

We submit that under the decisions of the Supreme Court of Ohio, in the cases of *State ex rel. v. Carrel*, 99 O. S., 220, and in *Saviers vs. Smith*, 101 O. S., 132, the act in question is not defective.

The first syllabus, also the holding of the state court in the case of *Castle vs. Mason*, *supra*, where the earlier inspection law was held invalid, was held to be not repugnant to the state constitution. See first syllabus. Of course the construction of a state statute by the Supreme Court of the state, as to its conformity to the state constitution, is binding and conclusive upon this court. That there is no valid objection to an ordinance because it is both a regulation and a tax law, has been settled by this court in *Gundling v. Chicago*, 177 U. S., 188, where it is said:

"It is not a valid objection to an ordinance that it partakes of both the character of a regulation and also that of an excise or privilege tax. The business is more easily subjected to the operation of the power to regulate, where a license is imposed for following the same, while the revenue obtained on account of the license is none the less legal because the ordinance which authorizes it fulfills the two functions, one a regulating and the other a revenue function."

The constitutional question is not what form the law takes or on what theory it originated, but had the legislature power to enact it? Or, as expressed in the Marmet case, page 70:

"Whether the authority to enact laws of the character of the one in question shall be regarded as based upon the police power of the government, or upon the taxing power, is, perhaps, not of the greatest importance, provided the power is found to exist. We have the best of authority for the oft-repeated aphorism that 'there is no magic in names.' "

CONCLUSION.

In the light of the evidence before the special tribunal, we submit (1) that it is clear that there is no excess charged or collected from interstate inspection over and above the reasonable cost of inspection; (2) in the practical administration of the Ohio oil inspection law it is possible to ascertain the comparative cost of interstate inspections as distinguished from the cost of intrastate inspection.

Consistent with these conclusions we therefore submit that the order and judgment below should be reversed or modified and remanded for further proceedings.

Respectfully submitted,

JOHN G. PRICE,
Attorney General of Ohio.
JOHN M. PARKS,
Special Counsel.
RAY MARTIN,
Special Counsel.
Columbus, Ohio.

AUG 7
WM. R. S.

In the Supreme Court of the United States

No. **324**

OCTOBER TERM, 1921.

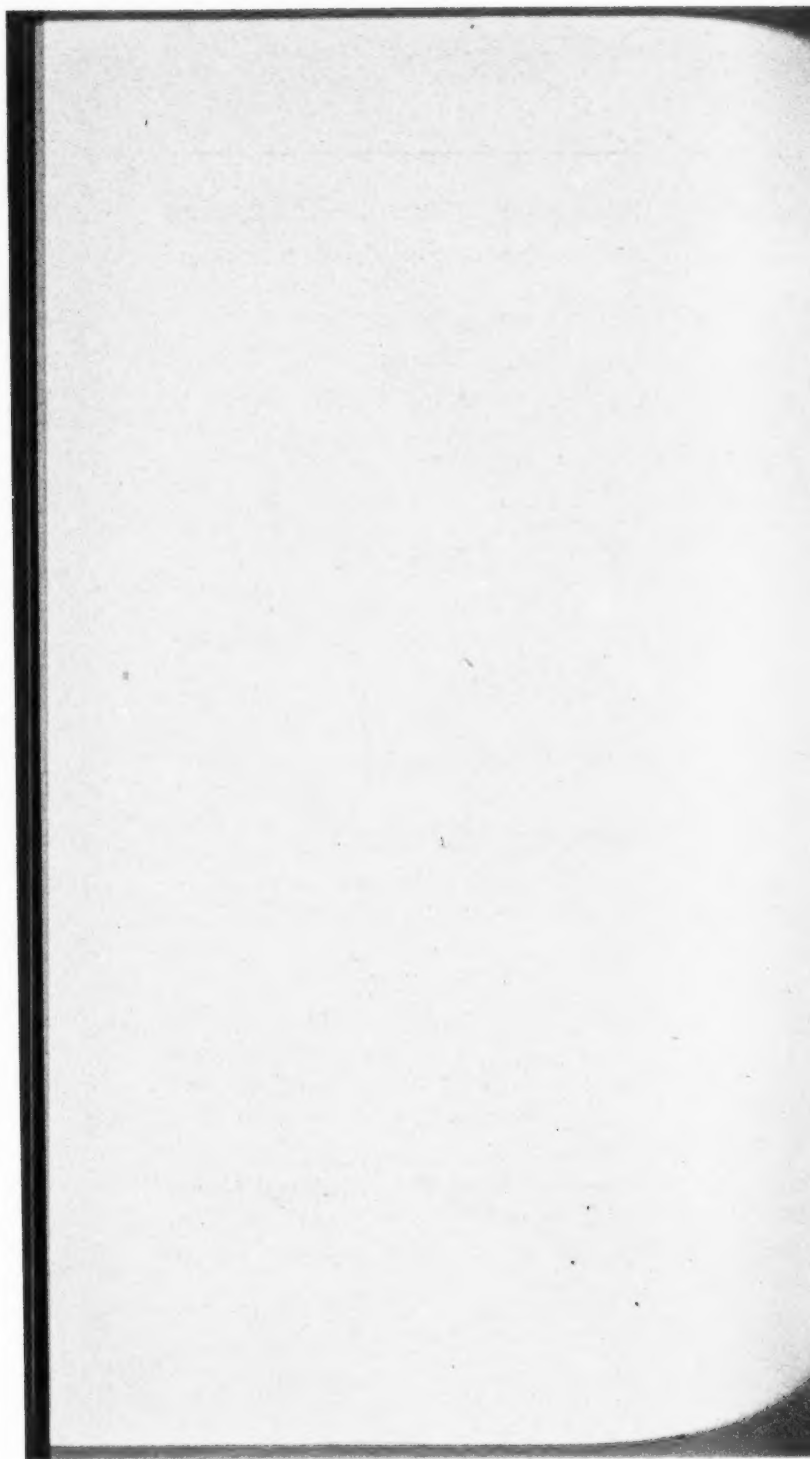
**W. H. PHIPPS, AND W. H. PHIPPS AS DIRECTOR OF
THE DEPARTMENT OF COMMERCE OF THE STATE
OF OHIO,
*Appellant,***

VS.

**THE CLEVELAND REFINING COMPANY OF
CLEVELAND, OHIO,
*Appellee.***

BRIEF OF APPELLEE.

**CHAMBERLIN & FULLER,
*Solicitors for Appellee.***



In the Supreme Court of the United States

No. 865.

OCTOBER TERM, 1921.

W. H. PHIPPS, AND W. H. PHIPPS AS DIRECTOR OF
THE DEPARTMENT OF COMMERCE OF THE STATE
OF OHIO,
Appellant,

VS.

THE CLEVELAND REFINING COMPANY OF
CLEVELAND, OHIO,
Appellee.

BRIEF OF APPELLEE.

STATEMENT OF CASE.

Briefly stated this action questions the constitutionality of the Ohio oil inspection law as violating the provisions of the Constitution of the United States, Article I, Sections 8 and 10 thereof.

The provisions of the Act of the General Assembly of May 19th, 1915 are set out in the memorandum opinion of the lower court at page 78 *et. seq.* of the Record. The fees collected from July 1st, 1915 to June 30th, 1920 amounted to \$639,057.47, the disbursements were \$321,188.68—more specifically stated at page 6 of the Record—so found by the court (p. 80 Record) and admitted by the appellant (p. 15 Record). Upon the au-

thority of *Foote vs. Maryland*, 232 U. S. 494, and *Standard Oil Co. vs. Graves*, 249 U. S. 389 approving *Castle vs. Mason*, 91 O. S. 296, the lower court finds the whole act aforesaid null and void and issued its decree as set out at page 86 of the Record.

That the decision of the lower court is sound is shown by cases considered by this Court subsequently decided citing the decisions *supra*:

Askren vs. Continental Oil Co., 252 U. S. 444.

Bowman vs. Continental Oil Co., 256 U. S. 642.

Texas Company vs. Brown, April 17, 1922.

EXCEPTIONS OF APPELLANT.

Two exceptions are taken to the decision of the lower court by appellant.

1. The State's cost of interstate inspection is greater than the fees charged therefor.

2. In practical administration the comparative cost of interstate inspection is ascertainable as distinguished from the cost of intrastate inspection. (p. 88 Record.)

The two exceptions are really one which is that the Ohio Act is severable in its application to interstate and domestic commerce; that under such severance it will appear that the inspection of oil and petroleum products in interstate commerce costs the state more than the fees collected and that the inspection law when applied to domestic commerce is transmuted into some sort of excise tax valid as to such commerce but invalid as to interstate commerce.

The effort is acrobatic and when made at the hearing the lower court refused to respond (Record 82 *et seq.*).

As the lower court aptly says the Act does not contemplate a separation of interstate and intrastate shipments and contains no provision for a separate record or accounting, and such provisions can not be imported into it by implication.

The history of the Act plainly shows that the legislative intent was to cure the repugnancy of the preceding act found invalid in *Castle vs. Mason*, 91 O. S. 296, by reducing the fees provided for therein from seven cents to three cents per barrel for bulk inspections since the re-enactment was made in the same words in all provisions except as to the amount of the fees. As the lower court said it was a police measure and not a tax law, requiring the inspection of all oil and gasoline before sale in the state.

Section 860 requires all oil to be inspected within the state and if in tank cars, as is now the custom, delivery in packages being too expensive, a certificate containing the car number must be issued and attached to the car before unloading either at the refinery if within the state or at the delivery station at the direction of the inspector, so whether from within or without the state the inspection incurring the expense must be made in the original package and a lien is created at once for the fees charged.

Appellant urges that while the law admittedly provides for no separation yet by administrative interpretation, and rules and regulations of his department he may legislate to supply the deficiency and having shown that the cost of inspection of interstate shipments of oil is equal to or greater than the fee the repugnancy to the Federal Constitution is removed and the Act becomes valid; that the act as to intrastate commerce is not a police law as intended but an excise tax, not made so by

solemn enactment under the carefully guarded provisions of the State Constitution by the legislative branch of the state, but by administrative interpretation. This is more novel than convincing.

Supposing fifty per cent of the inspections of interstate shipments show an excess of fee over cost, must he legislate again?

It is readily apparent from an examination of the record in this case that the officials charged with the enforcement of this inspection law kept no accurate records showing separately the costs incurred and the fees received from inspections of interstate shipments as distinguished from inspections of purely intrastate shipments. (See testimony of W. H. Phipps, page 25 of Record.) The state made an effort, somewhat ingenious, to show that the cost of inspecting interstate shipments exceeded the fees received therefrom. Exhibits were introduced in evidence based upon the showing in the various districts of the state for short periods of time, through which it was claimed losses running from nine cents to \$161.91 were sustained from inspecting interstate shipments. The value of these exhibits and of the fugitive figures contained therein to the contention of the state is entirely destroyed by the statement of Mr. Phipps on cross-examination that he had not summed up the entire state to determine the cost of inspection of the interstate shipments and that he "would not be justified in making a conclusion so that I could give all the figures and state the exact amount." Even these figures could not be positively identified as referring to interstate shipments. It is admitted that the records do not "show all of the inspections that were made of interstate shipments into the state of Ohio," "because we haven't the complete record." (W. H. Phipps, Page 23 Record).

The most that can then said of these exhibits and the figures they contain is that they serve to confuse the issue. Their manifest paucity and inaccuracy cannot be cured by the arithmetical calculations on pages 16 and 17 of appellant's Brief.

The evidence of the state, (nearly all given over objection of the appellee) on the relative cost and expense of inspections of interstate shipments is patently dubious if not fallacious. At best it merely demonstrates the possibilities of an ingenious administration of the law not contemplated within the statute nor anticipated by the General Assembly of Ohio in its enactment. The rules and regulations of an administrative official or body are intended solely for the purpose of effectuating a statute. It is well established that a statute cannot be varied, extended, augmented or enlarged by purely administrative rules and regulations. In short it is not given to an administrative official to usurp purely legislative functions.

Blue vs. Beach, 155 Ind. 121, 131.

State vs. Loechner, 65 Neb. 814, 821; 59 L. R. A. 915, 918.

I Corpus Juris, 1240, note 78.

"It is our duty to construe the law as written and that of the Legislature to make or modify it."
McCoach vs. Phila., 117 Atl. 71-73.

In the case of *Ratterman vs. Western Union Telegraph Co.*, 127 U. S. 411, the severance of the tax imposed as a single act of the Ohio legislature was made by stipulation of the facts, so that the severance was presented with the case, the tax condemned in toto as to interstate commerce (messages) but upheld as to intrastate.

No such thing could be done in this case as it does not contemplate a tax question. It goes no farther than an inspection law, purely a police measure and applies indiscriminately to all the products required to be inspected and the commingled receipts paid over to the Treasurer of the State.

In *Askren vs. Continental Oil Co.*, 252 U. S. 444, and its sequence *Bowman vs. Continental Oil Co.*, 256 U. S. 642, on the question whether a license tax on gasoline sold or used within the State of New Mexico was valid, it was held, both as to license and tax, to be invalid as to interstate commerce but valid as to domestic sales. The Court below said, Rec. 84:—

“In the *Bowman* case the Supreme Court regarded the application of the tax to interstate commerce as separate from its application to intrastate commerce, condemning the impost on the former but sustaining it on the latter. * * * The Act makes no such separation of cost, nor does it afford any means for so doing.”

In *Texas Co. vs. Brown*, Adv. Opinions No. 14, page 428, decided April 17, 1922, the nearest approach to the instant case, the legislature avoided it by an act passed after the question was raised providing that the entire inspection act “shall never be held or construed to apply to oils and gasoline, benzine or naphtha, or other articles mentioned in said laws, imported into this state in interstate commerce and intended to be sold in the original and unbroken tank cars or other original receptacles or packages, and so sold, while same are in interstate commerce.” The Court said, page 430:—

“In view of the provisions of this act we need spend no time in discussing whether the judges were right in following the rule of practical separability in administration, applied by this court to a *taxing*

law single on its face, in *Ratterman vs. Western Union Telegraph Co.*, *supra*, a case following, since the decision below, in *Bowman vs. Continental Oil Co.*, 256 U. S. 642. Any question whether the same or a different rule ought to be applied to an *inspection law* employed for the purposes of revenue taxation, *based upon doubt as to the intent of the legislature to permit the system to remain in force with respect to products stored within the state or sold in domestic commerce, when determined to be enforceable as to the like goods while in interstate commerce, is set at rest by the new act, which, under the circumstances must be accepted as manifesting an intent that the system shall remain in effect as to products that are subject to the taxing power of the state, as clearly as it declares a contrary purpose as to products still remaining in interstate commerce.*"

Both the lower court and this Court condemned the tax on interstate commerce which sustains our contention.

The Ohio Act in question can not be an inspection law as to interstate commerce and at the same time a tax law as to intrastate commerce for if regarded as an inspection law, a police measure, as to both, it is not severable, and must be treated as such as it and its predecessor has been for a half century.

If it be a tax law as to both it is void *ab initio* as to interstate commerce under repeated decisions of this Court and does not conform as such to the constitutional requirements of the state constitution as to domestic commerce.

CONCLUSION.

In conclusion we urge upon the notice of the Court these considerations:

1. The Ohio Inspection Act in question is a police measure, the manifest intent of the legislature in its enactment was to have it avoid becoming a revenue measure by reducing the fees provided in a former act framed in the same words as to general provisions and found invalid by the Supreme Court of the state in *Castle vs. Mason, supra*.

2. There is no intent shown to enact a tax law; no proper rule of construction to interpret it as such and no administrative record giving it such practical effect.

3. The so-called record of testimony does not show facts upon which any conclusion can be based as to the cost of inspection and is merely inferential and speculative.

4. There is no basis for a separation of the provisions of the Act by court construction or by administrative interpretation.

5. There is no error in the opinion of the lower court and its judgment should be affirmed.

Respectfully submitted,

CHAMBERLIN & FULLER,
Solicitors for Appellee.

Dated at Cleveland, Ohio, this 1st day of August, 1922.

CHAMBERLIN & FULLER, *Charles D. Chamberlin*
Attorneys at Law, *Hubert B. Fuller*
826 Guardian Bldg.,
Cleveland, Ohio.

PHIPPS AND PHIPPS, AS DIRECTOR OF THE DEPARTMENT OF COMMERCE OF THE STATE OF OHIO, *v.* CLEVELAND REFINING COMPANY OF CLEVELAND, OHIO.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO.

No. 324. Argued March 15, 1923.—Decided April 9, 1923.

A state law applicable to interstate and intrastate commerce, which imposes fees for the inspection of petroleum products in excess of the legitimate cost of inspection, imposes a tax and is void, if not so far separable that the excess may properly be assigned to intrastate commerce alone. P. 451.

277 Fed. 463, affirmed.

APPEAL from an interlocutory decree of the District Court restraining the collection of fees for inspection of petroleum products.

Mr. William J. Meyer, with whom *Mr. John G. Price*, Attorney General of the State of Ohio, *Mr. John M. Parks* and *Mr. Ray Martin* were on the brief, for appellant.

Mr. Charles D. Chamberlin, with whom *Mr. Hubert B. Fuller* was on the brief, for appellee.

MR. JUSTICE McKENNA delivered the opinion of the Court.

The Cleveland Company is a dealer in petroleum products and brought this suit to restrain the execution of an act passed by the General Assembly of Ohio, May 19,

1915, entitled "An Act to provide for the inspection of petroleum, illuminating oils, gasoline, naphtha; and the repeal of sections 844 to 868, inclusive, of the General Code." Ohio Laws, vol. 105, p. 309.

The case presented by the bill is as follows: The company is engaged in business in East Cleveland and has the necessary instrumentalities for carrying on its business (the bill enumerates them). It buys its products in other States, ships them into Ohio and receives at its place of business large quantities of them. It has contracts for them which it is bound to consummate and which it cannot perform without great loss except through its established business.

By the terms of the statute, oil intended for sale for illuminating purposes must be inspected in Ohio, and it designates the fees to be paid to the State Inspector or his deputy, which are payable on demand and are made a lien upon the articles inspected. And there are provisions which safeguard the quality of the oil.

The quantities of petroleum products are increased year by year and the revenue derived by the State will increase over and above the revenue derived in past years if the enforcement of the act is permitted to continue, and the act is repugnant to Article I, § 10, clause 2, of the Constitution of the United States forbidding States from laying imposts without the consent of Congress upon interstate commerce, except such as may be absolutely necessary for the execution of inspection laws.

The act violates Article I, § 8, giving to Congress the power to regulate commerce, and also violates certain provisions of the constitution of Ohio.

The District Court decided that "the act, except as to the amount of fees charged for inspection" was "in its essential details, and even in nearly all of the language employed, a re-enactment of the law declared unconstitutional in *Castle v. Mason*, 91 O. S. 296." Commenting

on the latter case, the court said it found the earlier act did not differ materially from the law pronounced void in *Foot v. Maryland*, 232 U. S. 494, and that also held to be void in *Red "C" Oil Manufacturing Co. v. North Carolina*, 222 U. S. 380. And observed, "The General Assembly, with at least constructive knowledge that, under the operations of the law, the excess of receipts over expenses was large and annually mounting, permitted the inspection charges to remain undisturbed, and in this respect its conduct has differed from the conduct of the Minnesota legislature with reference to the act considered in *Pure Oil Co. v. Minnesota*, 248 U. S. 158."

The conclusion of the court was upon further consideration of the facts pertinent to the purpose and quality of the act, that it was an interference with interstate commerce. The court said, "The fees prescribed by the statute are beyond the cost of legitimate inspection to determine the quality of the articles inspected, and the act is therefore not only a police measure, but a revenue measure also. Such cost by necessary operation unduly burdens and obstructs the freedom of interstate commerce, and, as such commerce cannot be separated from the intrastate shipments, the whole tax is void."

The court was of opinion that the other questions discussed by counsel were not necessary to consider.

Phipps, as an individual, was dismissed from the case except as Director of the Department of Commerce. Against him as such a temporary injunction was ordered to issue.

Appellant contests the conclusion of the court and condenses his assignments of error to the following propositions: "1. The State's cost of interstate inspection is greater than the fees charged therefor. 2. In practical administration, the comparative cost of interstate inspection is ascertainable as distinguished from the cost of intrastate inspection."

It is admitted that these conclusions depend upon an estimate of the evidence, and the District Court adjudged against them. The court found that the fees collected from July 1, 1915, to June 30, 1920, amounted to \$639,057.47; the disbursements to \$321,188.68. The court further found that "The collections, when least, were sixty-three per cent. greater than the inspection costs" and had "so advanced from year to year that the fees provided by the statute must be held to be unreasonable and disproportionate to the service rendered, and the Act must be declared unconstitutional, as imposing a direct and unlawful burden on interstate commerce, unless interstate shipments under the provisions of the Act are separable from intrastate shipments and the fees collected for the inspection of the former are equal or substantially equal to the cost of inspecting shipments of that character. The defendant's [appellant's] position is that the two classes of shipments are thus separable, and the interstate shipments have in fact been inspected at a loss to the State."

The position was held untenable by the court upon considerations and reasoning which we need not reproduce. It is enough to say we approve of them. It is contended by appellant that whatever defects may exist on the face of the act, may be and will be corrected in its administration, and whatever excess there may be in the fees collected will not be assigned to interstate commerce. There is quite a minute and detailed argument to show how this can be done. The District Court upon consideration in connection with the evidence rejected it, and we affirm its judgment.

Judgment affirmed.